

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Aviation

AGENDA DATE: April 23, 2024

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: District 3

STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBGOAL: N/A

SUBJECT:

A Resolution that the Director of Aviation, or designee, be authorized to sign on behalf of the City of El Paso, the Airline Operating Agreement and Terminal Building Lease, and Non-Signatory Airline Operating Agreement, which shall be in the formats attached hereto. All such agreements shall be approved "As to Form" by the City Attorney prior to execution.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of the format of the Signatory Agreement and Non-Signatory Agreement which will be executed by the passenger airlines and cargo carriers operating at El Paso International Airport. All such agreements shall be approved "As to Form" by the City Attorney prior to execution.

The term of the new agreement is five years, effective September 1, 2024, with one (1) additional two-year renewal period.

PRIOR COUNCIL ACTION:

- N/A

AMOUNT AND SOURCE OF FUNDING:

This is a revenue generating item.

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Samuel Rodriguez

Sam Rodriguez, Aviation Director

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Director of Aviation, or designee, be authorized to sign on behalf of the City of El Paso, the Airline Operating Agreement and Terminal Building Lease, and Non-Signatory Airline Operating Agreement, which shall be in the formats attached hereto. All such agreements shall be approved "As to Form" by the City Attorney prior to execution.

APPROVED this ____ day of _____ 2024.


CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Ignacio R. Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

EL PASO INTERNATIONAL AIRPORT
AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE

BY AND BETWEEN

THE CITY OF EL PASO

AND

AIRLINE

**AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1	DEFINITIONS 1
Section 1.01	Definitions
Section 1.02	Cross-References
ARTICLE 2	TERM 9
Section 2.01	Term
Section 2.02	Termination of Existing Agreements
Section 2.03	Holding Over
Section 2.04	Extension
ARTICLE 3	RIGHTS AND SPECIFIC PRIVILEGES 10
Section 3.01	Use of the Airport
Section 3.02	Specific Rights of Airline at the Airport
Section 3.03	Employee Parking Facilities
Section 3.04	Limitations on Use by Airline
Section 3.05	Airport Use Summary
ARTICLE 4	PREMISES 16
Section 4.01	Premises
Section 4.02	Equipment and Aircraft Parking Areas and Holdrooms
Section 4.03	Accommodation of Airline and Other Airlines
Section 4.04	Use of City Loading Bridges
Section 4.05	Use of City Lifting Device
Section 4.06	Requirement to Remain in Confines of Exclusive Use Space
Section 4.07	Reassignment of Leased Space During Construction
Section 4.08	Surrender of the Premises
Section 4.09	Access
ARTICLE 5	CAPITAL IMPROVEMENTS AND EQUIPMENT AND CAPITAL OUTLAYS 23
Section 5.01	Capital Improvements
Section 5.02	Equipment and Capital Outlays
ARTICLE 6	REPORTS, RENTALS, CHARGES, AND FEES 24
Section 6.01	General
Section 6.02	Monthly Activity Report
Section 6.03	Terminal Building Rentals
Section 6.04	Electricity Charges for Extraordinary Usage

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 6	REPORTS, RENTALS, CHARGES, AND FEES (Continued)
Section 6.05	Landing Fees 26
Section 6.06	Equipment Parking Rentals 26
Section 6.07	Security Screening Fee..... 26
Section 6.08	Airline Equipment or Improvement Charges 26
Section 6.09	International Arrivals Area Charges 27
Section 6.10	City-Owned Loading Bridge Charge 27
Section 6.11	Payment Provisions/Interest on Overdue Amounts 27
Section 6.12	Taxes and Other Charges..... 28
Section 6.13	Passenger Facility Charge..... 28
Section 6.14	Records of Airline 28
Section 6.15	Other Fees and Charges 28
Section 6.16	Right of Set Off 29
Section 6.17	Security Deposit..... 29
Section 6.18	No Other Fees and Charges..... 30
ARTICLE 7	CALCULATION OF RENTALS, CHARGES, AND FEES 31
Section 7.01	Rentals, Charges, and Fees 31
Section 7.02	Accounting Records..... 31
Section 7.03	Coordination Procedures--Budget Review and Calculation of Rentals, Charges, and Fees 31
Section 7.04	Calculation of Terminal Building Rental Rates..... 32
Section 7.05	Calculation of Landing Fee Rates 33
Section 7.06	Extraordinary Rate Adjustments 34
Section 7.07	Settlement..... 35
ARTICLE 8	BOND ORDINANCE 35
Section 8.01	Subordination to Bond Ordinance..... 35
Section 8.02	Creation of and Flow of Funds..... 35
Section 8.03	Initial Deposits into Maintenance and Operating Reserve Account and Renewal and Replacement Reserve Account..... 37
ARTICLE 9	MAINTENANCE AND OPERATION OF AIRPORT 37
Section 9.01	Designation of Operation and Maintenance Responsibilities 37
Section 9.02	City's Responsibilities 37
Section 9.03	Airline's Responsibilities 38
Section 9.04	City's Right of Entry 38
Section 9.05	Alterations and Improvements 39
Section 9.06	Environmental Regulations..... 39
ARTICLE 10	DAMAGE OR DESTRUCTION OF PREMISES 41
Section 10.01	Damage or Destruction 41
Section 10.02	Damage Caused by Airline 42

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 11 INSURANCE AND INDEMNIFICATION	42
Section 11.01 Insurance	42
Section 11.02 Indemnification	44
Section 11.03 Non-Liability of City	46
Section 11.04 Release of Liability Regarding Certain Damages	47
ARTICLE 12 ASSIGNMENT OR SUBLEASE	47
Section 12.01 General	47
Section 12.02 Bankruptcy	47
Section 12.03 Relinquishment of Space	48
Section 12.04 Consent	48
Section 12.05 Corporate Reorganization	48
ARTICLE 13 DEFAULTS	48
Section 13.01 Default	48
ARTICLE 14 TERMINATION	49
Section 14.01 Events Permitting Termination by Airline	49
Section 14.02 Conditions of Premises at Termination	49
Section 14.03 Events Permitting Termination by City	49
ARTICLE 15 GENERAL PROVISIONS	51
Section 15.01 Rules and Regulations	51
Section 15.02 Compliance with Law	51
Section 15.03 Nondiscrimination	52
Section 15.04 Affirmative Action	53
Section 15.05 Notices	53
Section 15.06 Subordination to Agreements with U.S. Government	53
Section 15.07 Nonwaiver of Rights	54
Section 15.08 Federal Aviation Act, Section 308	54
Section 15.09 Severability	54
Section 15.10 Headings	54
Section 15.11 Assignment by City or Other Successor in Interest	54
Section 15.12 Redevelopment	55
Section 15.13 Removal of Disabled Aircraft	55
Section 15.14 Quiet Enjoyment	55
Section 15.15 Agreement Subject to Covenants in Deed	55
Section 15.16 Force Majeure	55
Section 15.17 Entire Agreement	56
Section 15.18 Time is of the Essence	56
Section 15.19 Attorney's Fees	56
Section 15.20 Agreement Made in Texas	56
TABLE OF CONTENTS	

	<u>Page</u>
ARTICLE 15 GENERAL PROVISIONS (Continued)	
Section 15.21 Cumulative Rights and Remedies.....	56
Section 15.22 Interpretation.....	56
Section 15.23 Agreement Made in Writing	56
Section 15.24 Successors and Assigns.....	57
Section 15.25 Authorization to Enter Lease.....	57
Section 15.26 Compliance with ADA and other Disabled Access Laws	57
Section 15.27 Most Favored Nations.....	57
Section 15.28 Airline Deregulation Act	58
 CITY’S SIGNATURE AND ACKNOWLEDGMENT	 58
AIRLINE’S SIGNATURE AND ACKNOWLEDGMENT	59

EXHIBITS

Exhibit A	Cost Center Plan
Exhibit B	Terminal Premises
Exhibit C	Rate and Fee Schedule
Exhibit D	Operations, Maintenance, and Service Responsibilities
Exhibit E	Preferentially Assigned Equipment Parking Spaces
Exhibit F	Form of Monthly Activity Report
Exhibit G	Required Federal Provisions

**EL PASO INTERNATIONAL AIRPORT
AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE**

THIS AGREEMENT AND LEASE (hereinafter referred to as the "Agreement") is entered into this _____ day of _____, 20____, by and between the **CITY OF EL PASO, TEXAS** ("City") and **[Company Name]**, a corporation organized and existing under the laws of the State of (state), ("Airline").

W I T N E S S E T H:

WHEREAS, Chapter 22 of the Texas Transportation Code authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality; and

WHEREAS, Airline is engaged in the business of transportation of persons, property, or mail by air and desires to use certain facilities at the El Paso International Airport ("Airport") and lease from City certain premises and facilities in connection with its use of the Airport; and

WHEREAS, in furtherance of its authority, City desires to lease to Airline certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement; and

WHEREAS, the City and Airline have the power and authority to enter into this Agreement;

NOW, THEREFORE, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

SECTION 1.01 DEFINITIONS

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

"Affiliate" means any Air Transportation Company that is: (1) a parent or subsidiary of Airline, or its parent; or (2) shares an International Air Transport Association (IATA) code with Airline at the Airport (code-sharing partner); and otherwise operates under essentially the same trade name as Airline at the Airport,

and uses essentially the same livery as Airline. All seats on the Affiliates' aircraft will be sold in the name of the Signatory Airline in which they are serving as the Affiliate. Airline must designate in writing to the City any Air Transportation Company that will operate as an Affiliate of Airline at the Airport. An Affiliate of Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein., provided that (a) Airline remains a Signatory Airline to this Agreement; (b) Airline agrees and shall be obligated to serve as a financial guarantor for all rentals, fees, and charges incurred by such Affiliate of Airline at the Airport; and (c) such Affiliate has signed an operating agreement with the City indemnifying the City and requiring insurance. Airline shall be responsible for any and all unpaid rentals, fees, and charges of any such Affiliate while such Affiliate operates at the Airport.

"Agreement" means this Operating Agreement and Terminal Building Lease between City and Airline, as the same may be amended, modified, or altered from time to time pursuant to the terms hereof.

"Air Transportation Business" means that business operated by Airline or another Air Transportation Company at the Airport for the commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Air Transportation Company" means the legal entity engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Aircraft Arrival" means any aircraft arrival at the Airport, including, without limitation, scheduled, non-scheduled, diverted, training, testing, charter, or any other flight operated by an Air Transportation Company. Aircraft Arrivals exclude flights, which are forced to return and land at the Airport because of meteorological conditions, mechanical or operating causes, or emergency or precautionary reasons.

"Airline" means the Air Transportation Company executing this Agreement.

"Airline Equipment or Improvement" means any item of equipment or any improvement to Airline's Leased Premises provided or installed at request by Airline.

"Airport" means the identified areas "Airfield", "Terminal Building", "Air Cargo", "Aviation" and "Ground Transportation" at the El Paso International Airport: as shown in Exhibit A, Cost Center Map, attached hereto and made a part hereof, as it may be modified or developed from time to time, including all real property easements or any other interest within the identified areas therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City.

“Airport Cost Centers” means the cost centers to be used in accounting for Airport revenues and expenses and for calculating and adjusting certain rentals, fees, and charges described herein, as they now exist or may hereafter be modified, changed, or developed, as more particularly described below and depicted on Exhibit A as such Exhibit may be modified by the City from time to time:

1. Direct Cost Centers

- “Terminal Building” means the passenger terminal building and associated curbside entrance areas and adjoining landscaped areas.
- “Ground Transportation” means public and employee vehicle parking areas; rental car, ready/return parking areas; commercial vehicle parking areas; terminal roadways; and associated landside support facilities and areas.
- “Airfield” means that portion of the Airport providing for the landing, taking off, and taxiing of aircraft, including runways, taxiways, approach and runway protection zones, safety areas, infield areas, landing and navigational aids, and land areas required by or related to aeronautical use of the Airport. This cost center also includes the aircraft aprons at the Terminal Building and Air Cargo locations.
- “Aviation” means the hangars, buildings, and apron areas occupied by the Airport’s fixed base operators, other commercial aviation operators, and corporate/private aircraft operators.
- “Air Cargo” means the airfreight and cargo facilities located southwest of the Terminal Building on Convair Road and northeast of the Terminal Building on George Perry Boulevard.
- “Nonaviation” means those portions of the Airport set aside for non-aviation related commercial and industrial uses, including but not limited to industrial parks, golf courses, and any non-aviation related areas located, now or as may be located in the future, in any portion of the Airport.

2. Indirect Cost Centers

- “Administration” means all personnel, services, supplies, equipment, and facilities used to provide administrative support to Airport operations.
- “Public Safety” means all personnel services, supplies, equipment, and all facilities used to provide ARFF, Police, Canine, and Fire and Medical Services support to Airport operations.

- “Dispatch/Badging” means all personnel services, supplies, equipment, and all facilities used to provide badging for personnel on the Airport, and to provide dispatching services.

“Airport Revenue Bonds” means any bonds issued by City for Airport purposes secured by a pledge of the revenues of the Airport except for any Special Facilities Revenue Bonds.

“Airline Terminal Support System” means any system or service supporting Airline operations in the Terminal Building, including but not limited to, telecommunications, security, access control, paging, flight or baggage information display or similar systems or services.

“Amortization Discount Rate” means the discount rate (*i.e.*, interest rate) that will be used in calculating an annual amortization cost for a Capital Improvement to be included in Annual Amortization Recovery. Such Amortization Discount Rate shall be determined by the average rate reflected by The Bond Buyer 30 year Revenue Bond Index (“RBI”) as of June 30 of the preceding calendar year that the subject expenditure was made.

“Annual Amortization Recovery” means the total annual charges required to recover the annualized cost of City funded Capital Improvements over the Useful Life of such Capital Improvements and subject to the Annual City Funded Capital Improvement Cap.

“Annual City Funded Capital Improvement Total” means, in a given Fiscal Year, the total costs for all Capital Improvements that are (a) not financed with Bonds and (b) placed into service that Fiscal Year.

“Annual City Funded Capital Improvement Cap” means the maximum Annual City Funded Capital Improvement Total that shall be used in calculating airline rates and charges hereunder. The Annual City Funded Capital Improvement Cap shall be as follows: (1) for FY 2024, five million dollars (\$5,000,000), and shall increase two hundred fifty thousand dollars (\$250,000) in every year until end of term; (2) for FY 2025, five million two hundred fifty thousand dollars (\$5,250,000); (3) for FY 2026, five million five hundred thousand dollars (\$5,500,000); (4) for FY 2027, five million seven hundred fifty thousand (\$5,750,000); and (5) for FY 2028, six million dollars (\$6,000,000).

“Bond Ordinance” means any ordinance of City regulating or authorizing the issuance of bonds, other than Special Facilities Revenue Bonds, for Airport purposes, or payable from Airport revenues, as the same may from time to time be adopted, amended, or supplemented.

“Bonds” means Airport Revenue Bonds or any other similar or substitute financing instruments issued for Airport purposes under and pursuant to authorizing legislation.

“Capital Improvement Program” means the Airport’s program of Capital Improvements as such program may be amended from time to time at City’s sole discretion.

“Capital Improvement” means any single item or project costing more than one hundred twenty-five thousand and 00/100 dollars (\$125,000.00) (net of PFC revenue and grants-in-aid) and having a useful life in excess of five (5) years that is acquired, purchased, or constructed by City to improve, maintain, preserve, or develop the Airport. Capital Improvements shall include, but not be limited to: (1) the acquisition of land or easements; (2) the purchase of machinery, equipment, or rolling stock; (3) the planning, engineering, design, and construction of new facilities; or (4) the performance of any extraordinary, non-recurring major maintenance or replacement of existing facilities.

“City” means the City of El Paso, a municipal corporation organized under the laws of the State of Texas and its officers, directors, agents, and employees.

“Coverage” for any series of Airport Revenue Bonds means, for any Fiscal Year, the dollar amount computed by multiplying the rate covenant percentage set forth in any Bond Ordinance adopted by City by the annual debt service requirement for such Fiscal Year.

“Current Year Amortized Costs” means the amortized costs of Capital Improvements (provided that the total of the actual individual costs of Capital Improvements shall be subject to the Annual City Funded Capital Improvement Cap, if applicable) put in service in the then-current Fiscal Year. Such Current Year Amortized Costs shall be calculated amortizing each cost of the Capital Improvements put in service during the current Fiscal Year over the Useful Life of each item utilizing the applicable Amortization Discount Rate.

“Department” means the Department of Aviation of the City.

“Deplaned Passenger” shall mean any passenger disembarking an aircraft at the Airport and entering the Terminal Building including International Arrivals Area.

“Director” means the Director of Aviation of the Department of Aviation or other person properly authorized to act on behalf of Director.

“Enplaned Passengers” means all local, interline transfer, and intraline transfer passengers boarding flights of Airline, its Affiliates, or any other Air Transportation Companies using any of the Leased Premises of Airline at the Airport including revenue and non-revenue passengers but excluding Airline employees.

“Environmental Laws” means all present or future local, state or federal statutes, ordinances, rules, regulations, permits, citations, orders, directives, or consent decrees or other enforceable requirement of any federal, state or local entity, agency or body, or subdivision thereof (including specifically but without limitation, the City of El Paso), having governmental authority, relating to:

- (1) the protection of health, safety and the indoor or outdoor environment;
- (2) the conservation, management or use of natural resources and wildlife;
- (3) the protection or use of surface water and ground water;
- (4) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release or threatened release, abatement, removal, remediation or handling of, or exposure to any Hazardous Materials (as defined below); or
- (5) pollution (including any release or threatened release discharge or emission to air, land, surface water, or ground water);

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §18091 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Clean Water Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act (U.S.C. §300f-§300j-11 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Occupational Safety and Health Act, the Clean Air Act, 42 U.S.C. Section 7401 et seq. and any state counterpart, each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Materials, or special wastes or by the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The reference to Hazardous Materials in the immediately preceding sentence shall not limit the application of this paragraph to laws dealing with Hazardous Materials, it being the intention of the parties that all environmental laws dealing with activities having an impact on the environment be included within the scope of this paragraph.

“Equipment and Capital Outlay” means any single item or project not included in Maintenance and Operating Expenses or defined as a Capital Improvement. The cost of an item of Equipment and Capital Outlay shall be accounted for as a current expense.

“Exclusive Use Premises” means those portions of the Terminal Building assigned exclusively to Airline, as shown on Exhibit B, attached hereto.

“FAA” means the Federal Aviation Administration of the U.S. Department of Transportation or any federal agency(s) succeeding to its jurisdiction.

“Fiscal Year” means City’s fiscal year, which is the twelve-month period commencing September 1 and extending to August 31 of the following year, or such other twelve-month period as may be adopted for the operation of City or Airport.

“Hazardous Materials” means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the U. S. Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) or as extremely hazardous substances under 40 CFR Part 355 and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable Environmental Laws.

“International Arrivals Area” means that area in the Terminal Building at the Airport designated for federal inspection services (FIS).

“Joint Use Premises” means those Terminal Building areas which may be assigned to two or more Air Transportation Companies including on a common use or shared basis, along with all facilities, improvements, equipment, and services which are, or hereafter may be, provided for such use, as shown on Exhibit B, attached hereto.

“Leased Premises” means any areas on the Airport leased by City to Airline, whether on an Exclusive, Joint, common, Shared, Preferential, non-preferential or temporary use basis, as depicted on Exhibit B as attached hereto and made a part hereof.

“Maintenance and Operating Expenses” (or “M&O Expenses”) means, for any Fiscal Year, all expenses, paid or accrued, to maintain, repair, operate and administer the Airport, including, but not limited to, taxes and assessments, if any, and expenses for defending, settling, or satisfying litigation.

“Maximum Gross Landed Weight” means the maximum allowable landing weight of each aircraft operated by Airline at the Airport as authorized by the FAA and recited in Airline’s flight manual governing that aircraft.

“Passenger Facility Charge” or “PFC” means the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statutes and regulations currently exist or as they may be amended, modified, or supplemented during the Term of this Agreement.

“Preferential Use Premises” means those portions of the Terminal Building and aircraft aprons assigned to Airline, as shown on Exhibit B, attached hereto, to which Airline shall have priority over other users, subject to the provisions of Article 4.

“Prior Years Amortized Costs” means all amortized Capital Improvement costs included in years prior to the current Fiscal Year (*i.e.*, all prior years’ Current Year Amortized Costs), provided that the individual Capital Improvements have not reached the end of their Useful Life that was utilized to determine the applicable amortized costs. For clarity’s sake, 2024 shall be the first year of Current Year Amortized Costs utilized in determining the Prior Years Amortized Costs.

“Renewal and Replacement Reserve” means that reserve defined in the Bond Ordinance for the purposes of funding renewal and replacement expenditures of the City for the Airport.

“Rules and Regulations” means those rules, regulations, policies, and procedures that have been established by City or the Department for the orderly and efficient use of the Airport by airlines and other tenants and users as the same may be amended, modified, or supplemented from time to time. Such Rules and Regulations shall be made available by City to Airline upon request of Airline.

“Shared Use Premises” means those portions of the Terminal Building shared by Airline with other Air Transportation Companies, as shown on Exhibit B, attached hereto.

“Signatory Airline” means Airline and each other Air Transportation Company that (1) commits to having scheduled operations such that its rentals for Joint Use Premises under this Agreement amount to at least one hundred seventy-five thousand and no/100 dollars (\$175,000) on an average annual basis during the Term of this Agreement; and ; and (2) has executed an agreement with the City substantially similar to this Agreement. An all-cargo Air Transportation Company shall be considered a Signatory Airline if it guarantees a minimum of forty-five million (45,000,000) annual pounds of Maximum Gross Landed Weight throughout the Term of this Agreement, leases facilities on the Airport from City in a minimum annual amount of at least Eighty-five Thousand and no/100 Dollars (\$85,000), for a term at least equal to the Term of this Agreement, and has an agreement with City substantially similar to this Agreement.

“Special Facilities” means capital improvements or facilities located on any property owned or leased by City and located at Airport, which are financed by the issuance of Special Facilities Revenue Bonds.

“Special Facilities Revenue Bonds” means any debt of City which is permitted by, but not issued pursuant to, the terms of the Bond Ordinance and which is secured by and payable solely from rentals or other charges derived by

City under a lease, sale or other agreement (or any document securing the same) between City and the person, firm or corporation utilizing the Special Facilities financed thereby.

“Term” means the period of time during which Airline’s activities at the Airport are governed by this Agreement. Said Term shall begin on the Effective Date, and, except as otherwise set forth herein, terminate on the date set forth in Article 2.

“Title 14” means that portion of the El Paso City Code addressing aircraft and airports, as the same may be amended, modified, or supplemented from time to time.

“Total Airline Landed Weight” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of Airline over a stated period of time.

“Total Airline Landed Weight of Signatory Airlines” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of all Signatory Airlines over a stated period of time. Said sum shall be rounded to the nearest thousand (1,000) pounds for all landing fee computations.

“TSA” means the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

“Usable Space” means the gross space in the Terminal Building at the Airport less mechanical and related storage space and service areas as identified on Exhibit B.

“Useful Life” means the period of time that a Capital Improvement is to be recovered through the Annual Amortization Recovery. Useful Life shall be assigned to each Capital Improvement by the Director based on generally accepted accounting practices.

Additional words and phrases used in this Agreement but not defined either in this Article 1 or elsewhere herein shall have the meanings as defined under the Bond Ordinance or, if not so set forth, shall have their usual and customary meaning.

SECTION 1.02 CROSS-REFERENCES

References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

ARTICLE 2 - TERM

SECTION 2.01 TERM

This Agreement shall commence on September 1, 2024 (Effective Date) and terminate at midnight on August 31, 2029, unless cancelled sooner as provided herein.

SECTION 2.02 TERMINATION OF EXISTING AGREEMENTS

Any Terminal Building leases and operating agreements heretofore executed between the parties covering or pertaining to the Airport are canceled and terminated as of the Effective Date of this Agreement, provided that such cancellation and termination shall not be construed as a waiver, relinquishment, or release of any claims, damages, liability, rights of action, or causes of action that either of the parties hereto may have against the other under such existing leases and agreements and that have accrued before the Effective Date of this Agreement.

SECTION 2.03 HOLDING OVER

It is agreed and understood that any holding over by Airline of the Leased Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month only, and not as an extension or renewal of this agreement, and shall be in accordance with the provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution. Airline shall be liable to City for any loss or damage on account of any holding over against City's will after the expiration or cancellation of this Agreement, whether such loss or damage may be contemplated or not. If Airline holds over with the express written consent of the City, which may be granted or revoked in City's sole discretion, Airline shall pay Signatory rates, fees, and charges during such period. If the City gives notice to Airline that it objects or does not consent to such holdover, and Airline fails to vacate the Airline Premises within sixty (60) days of written notice of termination from the City, Airline shall pay the City one hundred fifty percent (150%) of Signatory rates, fees, and charges for each period beginning more than sixty (60) days after such notice, and the City reserves the right to determine Airline rates, fees, and charges according to any methodology permitted under Applicable Law.

SECTION 2.04 EXTENSION

In the event Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for one (1) additional two-year renewal period, through the mutual written agreement of Airline and City. To extend the term of this Agreement, the Director shall give written notice to Airline of City's intent to extend the Agreement no less than three (3) months prior to the expiration of the term of the Agreement. If Airline is not willing to renew for the extension period, Airline will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent within thirty (30) days from the notification of the City's intent to extend the term. During any extension period, the Agreement shall be extended on the same terms and

conditions, except Airline shall pay all rates, charges and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution.

ARTICLE 3 - RIGHTS AND SPECIFIC PRIVILEGES

SECTION 3.01 USE OF THE AIRPORT

Airline, its employees, passengers, guests, patrons, agents, independent contractors and invitees shall have the right to use, in common or jointly with other duly authorized users, those portions of the Airport, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their common or joint use, subject to the provisions of this Agreement and the Rules and Regulations.

SECTION 3.02 SPECIFIC RIGHTS OF AIRLINE AT THE AIRPORT

Airline shall have the right, subject to conditions contained herein and in addition to all rights elsewhere granted in this Agreement, to use the Airport for the following purposes, subject to the provisions of this Agreement and the Rules and Regulations:

- A. The operation of an Air Transportation Business, including all activities reasonably necessary to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, or testing of aircraft or other equipment of or operated by Airline, subject to the availability of space, and subject to such reasonable charges, regulations, and/or restrictions City may establish; provided however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.
- C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.
- D. The training of persons and testing of aircraft and other equipment at the Airport, such training and testing to be limited to that incidental to Airline's Air Transportation Business, and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. Flight training and aircraft testing shall be undertaken by Airline only to the extent permitted by and subject to the Rules and Regulations and in only those areas designated by Director. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere

with the use of the Airport, including excessive noise as reasonably determined by City.

- E. The purchase of Airline's requirements of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's Air Transportation Business. Nothing herein shall restrict City from levying nondiscriminatory concession or privilege fees or charges on any person or company conducting business at the Airport other than an Air Transportation Business and provided further that the City may require a third-party service provider or operator contracting with Airline to execute a written agreement with the City.
- F. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies to other Air Transportation Companies subject to City's right to charge and collect fees or commissions for such sales or exchanges as provided in Section 3.04 (H). Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only those functions that are incidental to the operation of its Air Transportation Business.
- G. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, at its Preferentially Assigned Aircraft Parking Areas or other aircraft parking positions designated by Director subject to the Rules and Regulations. Director reserves the right, at any time, to designate other locations reasonably accessible from the Terminal Building for the performance of aircraft maintenance and service activities if Director believes that such activities would interfere with aircraft operations of other Air Transportation Companies at the Terminal Building.
- H. The installation and operation of identifying signs and graphics on Airline's Leased Premises, subject to the prior written approval of Director, provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other Air Transportation Companies; (2) consistent with Department's graphics standards as established from time to time by Director; (3) in compliance with the Rules and Regulations; and (4) in compliance with City Code and all local laws and ordinances. However, Airline shall not install any promotional displays or advertising displays in its Leased Premises unless authorized in writing, in advance, by Director.
- I. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-

in counters in the Terminal Building, as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation and type of equipment shall require the prior written approval of Director and shall conform with all applicable federal, state, and local requirements. Airline is required to use the City's Multi-user Flight Information Display System (MUFIDS) and agrees to abide by the rules established by City for its use. Airline may use its own Flight Information Display System (FIDS) in its Leased Premises subject to the prior written consent of Director and subject to such reasonable conditions as Director may require.

- J. The provision of baggage porter, skycap, or curbside airline baggage check-in services. Airline may arrange with other Air Transportation Companies to provide such services or may provide such services on its own behalf.
- K. The use of the International Arrivals Area, depicted on Exhibit B, in common with other authorized users, subject to availability and payment of then current use charges.
- L. The right to erect, maintain, and station security screening devices and to conduct a security check operation of passengers, baggage, and packages in the Airline's Exclusive Use Space or Joint Use Space at a location approved by Director in his or her reasonable discretion.
- M. The right, in common with other Air Transportation Companies, to the use of City's lifting device, as required by 14 CFR Part 382, and any amendments thereto, and permits the use of that equipment in the course of the Airline's operations, including the performance of passenger handling/boarding services for other Air Transportation Companies at the Airport.

All rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to the Agreement are reserved for and to City.

SECTION 3.03 EMPLOYEE PARKING FACILITIES

Airline's employees working at the Terminal Building will be provided vehicular parking facilities, if available, in common with other employees. Such facilities shall be located in an area designated by Director. City reserves the right to assess a reasonable charge to Airline or its employees for such parking facilities.

SECTION 3.04 LIMITATIONS ON USE BY AIRLINE

In connection with the exercise of its rights under this Agreement, Airline:

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the use, operation, or maintenance of the Airport, including but not limited to effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Leased Premises or the Airport.
- B. Shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from Director to do so.
- C. Shall not dispose of or permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials, unless such waste material or products first be properly treated by equipment installed with the approval of City and any other administrative body having appropriate jurisdiction.
- D. Shall not keep or store any Hazardous Materials such as flammable liquids and solids, corrosive liquids, compressed gases, or magnetized or radioactive materials on the Airport except when all the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any liquids having a flash point of less than one hundred degrees (100°) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said materials shall be under the control and care of designated and properly qualified Airline personnel; (3) said materials shall be packaged, handled and stored in compliance with applicable U.S. Department of Transportation, Environmental Protection Agency, and other applicable regulations for transport, pre-transport and storage of hazardous articles and materials, including the Airport's Spill Prevention, Control, and Countermeasure (SPCC) Plan; and (4) said materials shall be only stored in such storage areas as are designated. Director reserves the right to require Airline to relocate any stored hazardous material necessary.

- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport without prior written approval of City. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and City.
- F. Shall not maintain or operate in the Terminal Building or elsewhere at the Airport, a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public, its employees, or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Airline may dispense food and beverages on board Airline's aircraft or to passengers boarding Airline's aircraft for consumption on board and provide vending machines solely for the sale of hot and cold beverages, food, and confections to Airline employees in areas not accessible to the general public. Airline may, by separate agreement with the City and to the extent it does not conflict with any terminal concession agreements, engage in the provision or sale of food or beverages at any airline club room or similar private facility at the Airport. However, in the event of originating flight delays greater than one hour, or for diverted flights or originating flights that have returned to the Airport, Airline may provide water and typical onboard snacks (e.g., peanuts, pretzels, etc.) at no charge to Airline's passengers in the holdroom area.
- G. Agrees to comply with all security measures required of Airline or City by the FAA or contained in City's FAA-approved Master Security Plan for the Airport, as such plan may be amended from time to time, or in any Airport Tenant Security Program as outlined in 49 CFR Part 1542 with respect to Airline's Exclusive Use Premises. Any fines and/or penalties levied against City for security violations at the Airport resulting from any non-compliance of Airline, its employees, officers, agents, affiliates, or suppliers while under its control, shall be immediately due and payable to City by Airline.
- H. May exercise the rights and privileges granted Airline under this Agreement with respect to the performance of ground services and activities in connection with its Air Transportation Business at the Airport, by Airline for and on behalf of Airline's regularly scheduled or unscheduled services and those of its Affiliates. Airline may, subject to the prior written approval of Director, and, where applicable, the payment of fees or commissions as provided for in this Agreement, perform ground services for any other Air Transportation Company using the Airport provided that Airline shall be solely responsible for the reporting to City of all such Air Transportation Company's landings, landed weights, and passengers and for the payment of all fees and amounts payable excluding PFCs, by or on account of such Air Transportation Company to City under this Agreement or under Title 14 unless such Air Transportation Company is a Signatory Airline. It is understood and agreed that City reserves the right to control access to

restricted areas and to collect reasonable fees or commissions for the provision of in-flight catering, vending, ground transportation, ground support, or other services by Airline for any Air Transportation Company other than Airline and for any services or facilities provided by or for Airline in competition with concessionaires and operators operating under an agreement with City.

- I. Shall park ground service or other equipment on the Terminal Building aircraft apron only at areas designated on Exhibit E or otherwise designated by Director.
- J. Shall not install any coin-operated or card operated machine(s) or device(s), except for: (1) machines for the sale of Airline's tickets or issuance of boarding passes located on Airline's Leased Premises or other areas approved in writing by Director; or (2) beverage or snack machines as provided in Section 3.04 (F) above.

SECTION 3.05 AIRPORT USE SUMMARY

Airline shall file with Director an Airport Use Summary, in a form acceptable to Director, providing the information specified below and such other non-commercially sensitive information as Director may reasonably request regarding Airline's operation at the Airport. Airline shall, at all times, maintain a current version of such Airport Use Summary on file with Director. The Airport Use Summary shall include the following information:

- Names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.
- The current and proposed schedules of Airline's flight activity at the Airport. Airline shall notify Director of schedule changes or the addition or deletion of flights at the Airport prior to or no later than the public announcement thereof.
 - The description of Airline's fleet and identification of the type of Airline's aircraft that are serving or will serve the Airport. Airline shall provide notice of the introduction of any aircraft that is not being operated by Airline at the Airport as of the date of this Agreement.

Such Airport Use Summary shall be updated and re-filed with Director whenever there is a change to the nature of Airline's operations at the Airport or whenever Director shall reasonably request the same.

ARTICLE 4 - PREMISES

SECTION 4.01 PREMISES

A. Categories of Space.

Airline shall lease areas in or adjacent to the Terminal Building on an Exclusive Use, Joint Use, Shared Use, or Preferential Use basis (or combination thereof) as follows and as more particularly delineated on Exhibit B, as such exhibit may be modified.

B. Space in Terminal Building.

At the Effective Date of this Agreement, Airline shall lease or use the areas in or adjacent to the Terminal Building shown on Exhibit B Airline's Leased Premises in the Terminal Building shall be subject to change from time to time by Director, after consultation with Airline. Any such changes shall be incorporated herein by Director transmitting to Airline replacement Exhibit B.

C. City may, during the Term of this Agreement, expand or modify the leasehold dimensions or location of Joint Use Space. If City elects to expand or modify the dimensions or location of such space, Director shall provide no less than sixty (60) days prior written notice to Airline and consult with and consider any suggestions of Airline prior to or during such notice period, but the approval of Airline shall not be required for any such expansion or modification by Director.

D. The dimensions on Exhibit B, as such exhibit may be modified in accordance with this Agreement, shall be the basis for determining the amount of the rentals payable pursuant to Articles 6 and 7. Director shall issue new Exhibit B after any Terminal Building expansion or modification.

SECTION 4.02 EQUIPMENT AND AIRCRAFT PARKING AREAS AND HOLDROOMS

A. Aircraft Parking Areas, including associated aircraft loading positions, apron areas and loading bridges ("gates") as shown on Exhibit "B-2" as such exhibit may be amended from time to time by Director, and associated Joint Use Space in the Terminal Building ("holdrooms") shall be assigned to Airline by Director on a preferential, nonexclusive use basis. Airline shall have priority in using gate(s) and holdroom(s) assigned to it on a preferential use basis to accommodate its flights, provided that Director may authorize other Air Transportation Companies to use such gate(s) and holdroom(s) in accordance with the provision of Section 4.03.

B. City reserves the right to reassign or recapture possession of one or more of Airline's preferentially assigned gate(s) and holdroom(s) if: (1) Airline's scheduled overall gate utilization falls below four (4) flights per gate per weekday to be verified by a method at the Director's reasonable discretion

and (2) Director determines that (i) other suitable gate(s) are not available and there is a need for the use of such gate(s) by another Signatory Airline or (ii) that there is a need for use of such gate(s) on a common use basis. Notice of such recapture or reassignment will be provided to Airline by written notice from Director requesting discussions with Airline and transmitting a revised Exhibit B. Airline shall then have sixty (60) days from receipt of said notice to respond to Director's notice either by accepting it or offering alternatives for consideration by the Director. At the end of this sixty (60) day period, the Director may, at his or her discretion, accept the alternative, if any, or proceed with the plan contained in the original notice. In the event of any reassignment or recapture, Airline will be entitled to payment by the Signatory Airline accommodated for the unamortized book value of any Airline-owned loading bridge or tenant improvements, and for any reasonable relocation costs. Accommodating Airline shall not be required to relocate until such time as this payment has been made.

- C. Airline shall park all its ground service equipment in its preferentially assigned Equipment Parking Area as set forth on Exhibit B. In the event Airline requires additional equipment parking, such parking shall be subject to availability, the written approval of Director, and applicable Rules and Regulations.
- D. Airline shall have the right to park one aircraft overnight per preferentially assigned gate. Airline may park more than one aircraft overnight per preferentially assigned gate subject to the prior approval of Director.
- E. During any construction or remodeling at the Terminal Building, City reserves the right, after consultation with a committee of local station managers selected by the Signatory Airlines, to temporarily reassign preferential use gates as provided in Section 4.07.
- F. Airline shall cooperate with City to accommodate other Air Transportation companies from time to time, as deemed necessary by Director for situations including, but not limited to, unscheduled flights (including charters), mechanical problems, and diversions due to weather.

SECTION 4.03 ACCOMMODATION OF AIRLINE AND OTHER AIRLINES

To maximize the use of terminal facilities at the Airport, to facilitate the entry of new Air Transportation Companies, and to accommodate the expansion plans of present Air Transportation Companies, Airline agrees, upon the request of Director, to accommodate in its Leased Premises any Air Transportation Company requesting facilities ("Requesting Airline"). Such accommodation shall be in accordance with the following procedure and subject to the City's rules and regulations promulgated pursuant to Section 4.10 herein:

- A. In order to secure the use of Terminal Building facilities, a requesting airline shall:
1. Arrange, by contacting the Director, to use City-controlled Terminal Building space and gates not preferentially assigned; or, if no such space is available;
 2. Contact Airline and other Signatory Airlines to request the use of such Leased Premises in accordance with the provisions of this Article.
- B. In the event the Requesting Airline demonstrates to the satisfaction of Director that it has made all reasonable efforts to secure facilities without success, Director shall then notify all Signatory Airlines in writing that, if Requesting Airline is not accommodated within thirty (30) days from the date of said notice, Director shall select one of the Signatory Airlines to comply with the request for accommodation.
- C. At the end of said thirty (30) day period, if Requesting Airline has not been accommodated, Director shall select Airline or another Signatory Airline to accommodate the Requesting Airline, taking into consideration such factors as current utilization of terminal facilities, schedule compatibility, union work rules, competitive relationships, and other relevant factors. Director shall send written notice to such selected Air Transportation Company (the "Accommodating Airline") requiring such airline to begin accommodating the Requesting Airline within thirty (30) days from the date of said notice. Director shall include in such notice the reason or reasons why such Accommodating Airline was selected.
- D. Upon receipt of said notice, the selected Accommodating Airline may submit written comments to Director contesting its selection and Director shall consider such comments before confirming or rescinding such selection. However, the decision of Director shall be final.
- E. Unless Director rescinds such selection within the thirty (30) day period specified in Section 4.03 (C), the Accommodating Airline shall accommodate the Requesting Airline by sharing its Leased Premises and aircraft parking positions on a timely, good faith basis and in a reasonable and equitable manner, subject to the following conditions:
1. In case of a conflict between schedules of the Accommodating Airline and the Requesting Airline, the Accommodating Airline shall have preferential use of its Leased Premises and preferentially assigned Aircraft Parking Areas.

2. The Accommodating Airline shall not require that the Requesting Airline obtain ground handling or other services from the Accommodating Airline.
 3. The Accommodating Airline may assess the Requesting Airline reasonable and non-discriminatory fees and charges for Airline-owned equipment used by Requesting Airline, which fees and charges shall be limited to Airline's actual costs of providing such equipment along with a 15% administrative fee.
- F. For any accommodation pursuant to this Article, the Accommodating Airline may require the Requesting Airline to insure and indemnify the Accommodating Airline against liability arising out of the use of its facilities and equipment, provided, however, Accommodating Airline must use the form of indemnification agreement provided by City if Accommodating Airline and Requesting Airline fail to reach agreement on another written agreement and obtain the City's approval within ten (10) days of Accommodating Airline's request to Requesting Airline for such an agreement. Such agreement may not require nor shall Airline otherwise require that Requesting Airline pay fees to Accommodating Airline for its normal operations at the gate except to the extent Requesting Airline uses Accommodating Airline's personal property.

SECTION 4.04 USE OF CITY LOADING BRIDGES

- A. Any loading bridges owned and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned loading bridges by Airline shall be subject to the following terms and conditions:
1. The loading bridges shall be operated only by employees, contractors, or agents of Airline, who are approved and qualified by Airline to operate the loading bridges.
 2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the loading bridges by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
 3. Airline shall be solely responsible for the costs to replace or repair any damage to loading bridges or other property caused by the operation of the loading bridges by its employees, contractors, or agents.

4. City, during the Term of this Agreement, shall reasonably maintain and keep in good repair the City-owned loading bridges referred to herein.
5. Airline shall pay the loading bridge charge as provided in Exhibit C.

SECTION 4.05 USE OF CITY LIFTING DEVICE

- A. Any lifting device owned and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned lifting devices by Airline shall be subject to the following terms and conditions:
 1. The lifting devices shall be operated only by employees, contractors, or agents of Airline who are approved and qualified by Airline to operate the lifting devices.
 2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the lifting devices by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
 3. Airline shall be solely responsible for the costs to replace or repair any damage to lifting devices or other property caused by the operation of the lifting devices by its employees, contractors, or agents.
 4. City, during the Term of this Agreement, shall reasonably maintain and keep in good repair the City-owned lifting devices referred to herein.

SECTION 4.06 REQUIREMENT TO REMAIN IN CONFINES OF EXCLUSIVE USE SPACE

Airline shall, at all times, with regards to their Exclusive Use Space, occupy and use only that space that is designated their Exclusive Use Space. Failure of Airline to remain within the confines of its Exclusive Use Space shall be a breach of this Agreement. Director shall notify Airline in writing of any infraction of this provision and, upon any continued infraction, City shall charge Airline double the normal specified monthly rent for the unauthorized occupancy or use of such Terminal Building space. Airline further agrees that it will, at all times, occupy and use the Joint Use Space so that its operations

and passengers do not impede or inconvenience the operations or passengers of other Air Transportation Companies.

SECTION 4.07 REASSIGNMENT OF LEASED SPACE DURING CONSTRUCTION

Director may temporarily reassign any Leased Premises or Aircraft Parking Area during any construction after ninety (90) days' written notice is provided to Airline. The cost for any temporary relocation resulting from construction shall, at the discretion of City, be either borne by the airline necessitating the relocation or shall be included as part of the City's project cost. During the period when Airline is temporarily relocated, appropriate adjustments to rentals shall be made to reflect any differences between the area of the Leased Premises and the area of temporarily assigned premises.

SECTION 4.08 SURRENDER OF THE PREMISES

- A. Airline covenants and agrees that on expiration of the term of this Agreement, or on earlier termination as hereinafter provided, or on reassignment of the Leased Premises as heretofore provided, it will peaceably surrender possession of the Leased Premises hereunder in good condition, reasonable wear and tear excepted, and City shall have the right to take possession of the Leased Premises. City shall not be required to give notice to quit possession at the expiration of the term of this Agreement.
- B. Airline shall have the right, on expiration or early termination and within thirty (30) calendar days thereafter, at its expense to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees.
- C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the property on which it is located, and title thereto shall thereupon vest in City. Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of any remaining Airline property after such thirty (30) day period. If City elects to remove or dispose of any remaining Airline property, it will use best efforts to remove or dispose of any Airline property in a reasonable amount of time.

SECTION 4.09 ACCESS

- A. Subject to the provisions herein, Title 14, the Rules and Regulations, and such other restrictions as City may impose with respect to Airline's use of Leased Premises, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's

Leased Premises and to public areas and public facilities of the Terminal Building.

- B. The ingress and egress provided for in Section 4.09(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized in advance and in writing by Director.
- C. City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Agreement.
- D. Airline agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, or independent contractors must be authorized by the City to enter restricted areas as defined in Title 14. Airline agrees that no person authorized to enter a restricted area by virtue of this Agreement shall permit any person who is not otherwise authorized to enter a restricted area unless such unauthorized person is, at all times while in the restricted area, in the company of an authorized person.
- E. Airline understands and agrees that, in the event the Federal Aviation Administration assesses a civil penalty against the City or Department for any violation of 49 CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Airline, its tenants, subtenants, patrons, agents, servants, employees, invitees, or independent contractors, Airline shall, upon demand of City, immediately reimburse the City in the amount of the civil penalty assessed.

SECTION 4.10 ACCESS

- A. The City may promulgate Rules and Regulations from time to time in order to effectuate the provisions of this Article 4, including without limitation provisions related to gate use and assignment, accommodation, and prioritization of common use facilities.

ARTICLE 5 - CAPITAL IMPROVEMENTS AND EQUIPMENT AND CAPITAL OUTLAYS

SECTION 5.01 CAPITAL IMPROVEMENTS

From time to time during the Term of this Agreement, City may, at its sole discretion, undertake Capital Improvements to the Airport. The costs of such Capital Improvements are not included, and for the Term of this Agreement, shall not be included, in the calculation of rentals, charges, and fees pursuant to Article 7.

Notwithstanding the foregoing, the City may include amortization costs of Capital Improvements in the calculation of such rentals, fees, and charges, provided that the total costs of Capital Improvements that can be recovered through the Annual Amortization Recovery process shall be capped each year of the Term at the amortized Annualized Capital Improvement Total.

Upon request of Airline, Director shall provide a copy of the most recent Capital Improvement Program.

SECTION 5.02 EQUIPMENT AND CAPITAL OUTLAYS

On or before July 15 of each year, Director shall, as part of the annual budget process, prepare an estimate of the purchase or construction cost of Equipment and Capital Outlays to be purchased or constructed and the estimated costs for such Equipment and Capital Outlays that are to be included in the calculation of the required next year's rentals, charges, and fees pursuant to Exhibit C. A listing of such budgeted Equipment and Capital Outlays shall be provided annually when the Airline and City meet as provided in Section 7.03.C.

ARTICLE 6 - REPORTS, RENTALS, CHARGES, AND FEES

SECTION 6.01 GENERAL

- A. In consideration for use of the Leased Premises and for the various rights, licenses, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City, during the Term of this Agreement, without deduction or set-off, rentals, charges, and fees to be calculated as set forth herein. City shall invoice Airline monthly for all such rentals, charges, and fees except landing fees, which shall be payable by Airline without invoice. Payment shall be made by Airline in accordance with Section 6.11 hereof.

SECTION 6.02 MONTHLY ACTIVITY REPORT

- A. Airline shall furnish to Director, on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals,

fees, and charges due under this Agreement in the form attached hereto as Exhibit F, or on such standard forms of the City or other forms approved or prescribed by the Director. Said report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month to include any non-scheduled and charter operations; (2) the total number of Enplaned Passengers and Deplaned Passengers to include any non-scheduled and charter operations; (3) the number of Enplaned Passengers who are originating their air journeys at the Airport (rather than transferring from other flights of Airline or other Air Transportation Companies at the Airport); (4) the number of Enplaned Passengers who are non-revenue passengers or frequent flier award coupon passengers as such terms are defined in 14 CFR Part 158, as amended; (5) the total number of Aircraft Arrivals and departures from non-preferentially assigned gates or City-owned loading bridges; (6) the number of arriving international passengers using the International Arrivals Area; (7) the weight of cargo, freight, mail, and express for such month; and (8) any other data needed to establish and assess rates and charges. Airline shall also report the activities set forth herein for any Affiliate or other Air Transportation Company or charter, which is handled by or uses the Leased Premises of Airline.

- B. If Airline fails to furnish Director with the report required by Section 6.02(A), it shall be considered in default under this Agreement and Airline's rentals, fees, and charges, as provided for hereafter, shall be determined by assuming that Airline's Total Airline Landed Weight and Enplaned Passengers for such month was one hundred fifty percent (150%) of its Total Airline Landed Weight and Enplaned Passengers during the most recent month for which such data are available for Airline and by applying the rates specified herein and the applicable City Annual Budget Resolution. Any necessary adjustment in such rentals, fees, and charges shall be calculated after an accurate report is delivered to Director by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the succeeding month.

SECTION 6.03 TERMINAL BUILDING RENTALS

- A. Airline shall pay to City for its Exclusive Use, Joint Use, and Shared Use space in the Terminal Building, as set forth on Exhibit B, monthly rentals based on annual rental rates to be calculated each Fiscal Year, as set forth in Exhibit C.
- B. Non-Signatory and Signatory Airlines shall pay rentals for Joint Use space for each Fiscal Year, as set forth in Exhibit C.

- C. Any Air Transportation Company using a gate on a non-preferential basis shall pay a Gate Per Use Fee for each per turn operation on such gate in accordance with Exhibit C.
- D. Any Air Transportation Company using a ticket counter on a non-preferential basis shall pay Ticket Counter Per Use Fee for each Per Turn Operation on such gate in accordance with Exhibit C.
- E. Rentals for Shared Use space shall be prorated among Airport tenants in proportion to the leased area of each tenant's Exclusive Use space relative to the total area of leased Exclusive Use space served by such Shared Use space.

SECTION 6.04 ELECTRICITY CHARGES FOR EXTRAORDINARY USAGE

Airline shall pay City charges for the extraordinary usage of electrical power in its Shared Use and Exclusive Use space and preferentially assigned gates based on the cost, without mark-up, to City for such extraordinary usage of electricity by Airline as arrived at through separate metering or computation by City. Airline shall report to Director any plans to decrease or increase its extraordinary usage of electrical equipment or electricity.

SECTION 6.05 LANDING FEES

Airline shall pay to City monthly Landing Fees to be determined by multiplying the number of one thousand (1,000) pound units of Total Airline Landed Weight for Airline during the month by the then-current Landing Fee Rate as calculated in Exhibit C.

SECTION 6.06 EQUIPMENT PARKING RENTALS

Airline shall pay City, as rent for its preferentially assigned Equipment Parking Area, an annual rental computed in Exhibit C.

SECTION 6.07 SECURITY SCREENING FEE

Airline shall pay City amounts sufficient to reimburse City for its share of City's actual cost of providing armed law enforcement support for the security screening operation as required by 49 CFR Part 1542. The cost of such support shall be apportioned by City among Air Transportation Companies using the secured passenger boarding areas on the basis of the share of each Air Transportation Companies' Enplaned Passengers relative to the total Enplaned Passengers of all such Air Transportation Companies as calculated in Exhibit C.

SECTION 6.08 AIRLINE EQUIPMENT OR IMPROVEMENT CHARGES

Upon the installation or provision by City of any Airline Equipment or Improvement, Airline shall pay for the use of such equipment or improvement amounts sufficient to

amortize the cost paid by City, including applicable maintenance and operating expenses, all as determined by City, as illustrated on Exhibit C attached hereto and made a part hereof.

SECTION 6.09 INTERNATIONAL ARRIVALS AREA CHARGES

Airlines shall pay amounts for the use of the common-use International Arrivals Area as stipulated in Exhibit C.

SECTION 6.10 CITY-OWNED LOADING BRIDGE CHARGE

Airline shall pay City a loading bridge charge on a monthly basis for the use of City-owned loading bridges preferentially assigned to Airline at a rate determined by City for the extraordinary costs of operation and maintenance required to support the operation of such loading bridges and the rate shall be set with the intent to recover such extraordinary costs over the course of a fiscal year or longer if the nature of such extraordinary costs would warrant doing so under standard accounting principles. Director may revise such loading bridge charge rate at the beginning of each Fiscal Year with prior written notice to Airline.

SECTION 6.11 PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS

- A. All Exclusive Use and Shared Use Rentals, Apron Use Fees, Equipment Parking Rentals, Airline Equipment Charges and any City-owned loading bridge charges on preferentially assigned gates shall be due and payable the first day of each month, in advance, without invoice.
- B. Landing Fees shall be due and payable on or before the twentieth (20th) day of each month, without invoice.
- C. All Joint Use, Security Screening Fees, and other fees and charges shall be due and payable on invoice within thirty (30) days of the date of invoice.
- D. The acceptance by City of any payment made by Airline shall not preclude City from identifying the accuracy of computations in Airline's Monthly Activity Report, submitted to Director as provided in Section 6.02, or from recovering any additional payment actually due from Airline.
- E. If any payment is not received by City by the due date, City may, at its discretion, charge Airline interest at the highest rate permitted by law. All payments due and payable herein shall be paid in lawful money of the United States of America, without set-off, electronically by Automated Clearing House (ACH), or by check made payable to City and delivered or wired, as applicable, to the following address or account, or to such other address or account as City may notify Airline in writing from time to time:

Via Mail
Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79925-1278

SECTION 6.12 TAXES AND OTHER CHARGES

Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Airline or City, with respect to the Leased Premises, Airline's use and/or occupancy of the Leased Premises, or any improvements thereon, during the term of this Agreement including any extensions or option periods granted thereto.

Airline in good faith may contest any tax or governmental charge; provided that Airline may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the City, such action will not adversely affect any right or interest of the City.

SECTION 6.13 PASSENGER FACILITY CHARGE

- A. City reserves the right to assess and collect PFC's subject to the terms and conditions set forth in 49 U.S.C. § 40117 (the "PFC Act") and the rules and regulations thereunder, 14 C.F.R. Part 158 (the "PFC Regulations"), as may be supplemented or amended from time to time. Airline shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by Airline to remit PFC's within the time frame required by 14 CFR Part 158 shall be deemed an event of default pursuant to Section 13.01.
- B. If Airline transports passengers from the Airport on Airline's aircraft chartered by a charter Air Transportation Company or tour operator issuing passenger tickets other than Airline's, Airline will provide the City with a schedule detailing the date and time of the flight and the number of Enplaned Passengers. Excepting only passengers on flight chartered by an Air Transportation Company or tour operator not required to collect a PFC under the Airport's applicable record of decision, Airline agrees to pay the required PFC amount due the City in a timely manner and to seek reimbursement from the charter Air Transportation Company or tour operator with no liability to the City.
- C. Airline shall hold the net principal amount of all PFCs that are collected by Airline or its agents on behalf of the City pursuant to the PFC Act and the PFC Regulations in trust for the City. For purposes of this Section, net principal amount shall mean the total principal amount of all PFCs that are

collected by Airline or its agents on behalf of the City, reduced by all amounts that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations (such net principal amount known as “PFC Revenue”). Airline acknowledges that all PFC Revenue collected for the City neither belongs to nor is owned by Airline except to the extent set forth in applicable Federal law and, unless the status of PFC Revenue in the possession of Airline is characterized in a separate manner under FAA regulations (in which case such characterization shall prevail), that such PFC Revenue is held in trust by Airline for the exclusive use and benefit of the City. Airline shall not make any claim in any document or proceeding that, for PFC Revenue collected by Airline on behalf of the City, the Airline has any legal or equitable interest in such PFC Revenue, except to the extent Airline is specifically granted such interest by Federal statute or regulation, including the right of reimbursement from such PFC funds for the Airline’s costs of collection.

- D. Any late payment of the PFC may be subject to late fees computed at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate permitted by Applicable Law, from the due date until paid, to the extent allowed by Applicable Law.
- E. Airline acknowledges that the City has given to the United States of America, acting by and through the FAA, certain assurances under the PFC Act and the PFC Regulations, including Appendix A thereto (the “PFC Assurances”), and Airline agrees that this Agreement shall be subordinate and subject to all PFC Assurances. In the event the FAA requires any modification of this Agreement as a condition precedent to the City’s collection of PFCs or as a means to effect the City’s compliance with the PFC Act, the PFC Regulations, or the PFC Assurances, Airline shall not withhold its consent to any modification of this Agreement as may reasonably be required for the City to collect PFCs or to comply with the PFC Act, PFC Regulations, and/or PFC Assurances.

SECTION 6.14 RECORDS OF AIRLINE

Airline shall keep and maintain a complete and adequate set of records of all landing weights and other information specified in Section 6.02 hereof or otherwise required for the calculation or payment of fees required under this Agreement for the current Fiscal Year and the three (3) immediately preceding Fiscal Years, and shall make such records available for inspection by Director at any and all reasonable hours and times.

SECTION 6.15 OTHER FEES AND CHARGES

City expressly reserves the right to assess and collect (1) reasonable and nondiscriminatory fees for concessions and other services provided by Airline for others

if such services provided by Airline would otherwise be available from a concessionaire or licensee of City; (2) reasonable and nondiscriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by City and accepted by Airline, including, but not limited to, FIS facility fees, special maintenance of airline Leased Premises, equipment vehicle storage, disposal fees, utility fees, remote ramp aircraft parking fees, and gate usage per turn fees; and (3) reasonable and nondiscriminatory fee for any employee parking area(s) provided at the Airport.

Anything in this Agreement to the contrary notwithstanding, this Section 6.15 shall not be interpreted or understood as contracting away the City's governmental authority and shall not be construed to waive any lawfully assessed taxes or any governmental charges.

SECTION 6.16 RIGHT OF SET OFF

City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). Past due amounts may include sums due under prior agreements, this Agreement, or for usage of the Airport as a non-signatory airline. In the event City exercises the right of set off it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

SECTION 6.17 SECURITY DEPOSIT

Airline agrees to pay a security deposit to City subject to the following conditions:

- A. Unless Airline has provided regularly scheduled weekday passenger or cargo flights to and from the Airport for the eighteen (18) months prior to Airline's execution of this Agreement (or prior to the assignment of the Agreement to Airline) without committing an act or omission that would have been an Event of Default under Section 13.01 of this Agreement, City shall have the right to require Airline to provide to City Security Deposit in an amount equal to three (3) months estimated fees and charges payable by Airline under Article 6 of this Agreement, to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all fees and charges due hereunder. Airline shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months (including any period prior to Airline's execution of this Agreement or prior to the assignment of this Agreement to Airline during which Airline provided regularly scheduled passenger flights to and from the Airport) during which Airline commits no Event of Default under Section 13.01 of this Agreement (and for any such prior period, no act or omission that would have been such an Event of Default hereunder). City shall provide Airline with written notice that Airline must provide the Security Deposit required hereunder and Airline shall provide the Security Deposit within ten (10) days of issuance of the notice. Such Security Deposit shall

be in such form and as shall be acceptable to City in its reasonable discretion. In the event that any such Security Deposit shall be for a period of less than the full period required by this Agreement, or if such Security Deposit is canceled, Airline shall provide a renewal or replacement Security Deposit for the period following the expiration or cancellation of such Security Deposit previously provided at least sixty (60) days prior to the date on which such previous Security Deposit expires or at least sixty (60) days prior to the effective date of such cancellation. City's rights under this Section 6.17 shall be in addition to all other rights and remedies provided to City under this Agreement.

- B. IF AIRLINE SHALL COMMIT AN EVENT OF DEFAULT UNDER SECTION 13.01 IN THE PAYMENT OF ANY FEES DUE UNDER THIS AGREEMENT, THE DEPARTMENT SHALL HAVE THE RIGHT, BY WRITTEN NOTICE TO AIRLINE GIVEN AT ANY TIME, TO IMPOSE OR REIMPOSE THE REQUIREMENTS OF SECTION 6.17(A) ON AIRLINE. IN SUCH EVENT, AIRLINE SHALL WITHIN TEN (10) DAYS FROM ITS RECEIPT OF SUCH WRITTEN NOTICE, PROVIDE THE DEPARTMENT WITH THE REQUIRED SECURITY DEPOSIT AND SHALL THEREAFTER MAINTAIN SUCH SECURITY DEPOSIT IN EFFECT UNTIL THE EXPIRATION OF A PERIOD OF EIGHTEEN (18) CONSECUTIVE MONTHS DURING WHICH AIRLINE COMMITS NO EVENT OF DEFAULT UNDER SECTION 13.01 OF THIS AGREEMENT. THE DEPARTMENT SHALL HAVE THE RIGHT TO REIMPOSE THE REQUIREMENTS OF SECTION 6.17(A) ON AIRLINE EACH TIME AIRLINE COMMITS SUCH AN EVENT OF DEFAULT DURING THE TERM OF THIS AGREEMENT. THE DEPARTMENT'S RIGHTS UNDER SECTION 6.17(B) SHALL BE IN ADDITION TO ALL OTHER RIGHTS AND REMEDIES PROVIDED TO THE DEPARTMENT UNDER THIS AGREEMENT.

City will also have the option to charge non-signatory landing fee rates if Airline does not comply with Section 6.17(A) above when required to do so.

SECTION 6.18 NO OTHER FEES AND CHARGES

Except as provided in this Agreement, no further rentals, fees, or charges shall be charged against or collected from Airline, its passengers, employees, shippers or receivers of freight or express, suppliers of materials, contractors or furnishers of services, by City for the premises, facilities, rights, licenses, and privileges granted to Airline under this Agreement, unless mutually agreed upon between City and Airline.

ARTICLE 7 - CALCULATION OF RENTALS, CHARGES, AND FEES

SECTION 7.01 RENTALS, CHARGES, AND FEES

Rentals, charges, and fees shall, subject to the provisions of Section 7.06 hereof, be reviewed and recalculated annually based on the principles and procedures set forth in this Article 7, and shall become effective on the effective date of this lease and each September 1st thereafter of each year of the Agreement.

SECTION 7.02 ACCOUNTING RECORDS

- A. City shall establish, and thereafter maintain, accounting records that will document the following items for each of the Airport Cost Centers: (1) revenues; (2) Maintenance and Operating Expenses; (3) Annual Amortization Recovery; (4) annual debt service on Bonds; (5) Equipment and Capital Outlays; (6) any annual funding requirements pursuant to the Bond Ordinance; and (7) any other funding requirements imposed by law or judgments.
- B. At the request of Airline, City shall provide to Airline its annual budget and financial statements as well as any supplemental financial data reasonably required to assess the adequacy of rates and charges established under this Agreement.

SECTION 7.03 COORDINATION PROCEDURES - BUDGET REVIEW AND CALCULATION OF RENTALS, CHARGES, AND FEES

- A. On or before the April 1 prior to the beginning of each Fiscal Year, Airline shall submit to Director, in writing, its Total Airline Landed Weight forecast for that Fiscal Year. City shall combine Airline's forecast with the Landed Weight forecasts of all other Signatory Airlines and make such adjustments as City deems appropriate to arrive at an estimated Total Airline Landed Weight of all Signatory Airlines to be used in the calculation of Landing Fee Rates.
- B. On or before the July 1 prior to the beginning of each Fiscal Year, or as soon thereafter as possible if the City Manager has not filed the proposed budget by that date, City shall make available to Airline the following reports:
 - 1. The Department's proposed annual budget for the Fiscal Year, including all estimated Maintenance and Operating Expenses, estimated annual debt service on Bonds, proposed expenditures for Equipment and Capital Outlays, and proposed expenditures for Capital Improvements for the Airport, all allocated to Airport Cost Centers on a consistent basis from year to year.

2. City's calculation of proposed airline rentals, charges, and fees for the Fiscal Year, based on the procedures set forth in this Agreement.
- C. Within thirty (30) calendar days after receipt of the reports, a meeting, shall be held between Director and the Signatory Airlines to discuss the proposed rentals, charges, and fees. Director shall give due consideration to any comments and suggestions of Airline regarding the proposed annual budget or the calculations of proposed rentals, charges, and fees.
- D. The City shall adopt an annual budget, which includes the annual Department budget, which may, in the sole discretion of City, include revisions made as a result of Director's discussions with Signatory Airlines or otherwise. At the request of Airline, City shall promptly furnish Airline with a copy of the adopted annual Department budget, together with the calculation of rentals, charges, and fees that will become effective as of the first day of the Fiscal Year.
- E. If, for any reason, the annual budget has not been adopted by City as of the first day of any Fiscal Year, the rentals, charges, and fees in effect during the preceding Fiscal Year shall continue in effect until: (1) the new annual budget has been adopted by the City; and (2) City has calculated the rentals, charges, and fees in accordance therewith. Once established, the new rentals, charges, and fees shall then be made effective retroactive to the first day of such Fiscal Year.

SECTION 7.04 CALCULATION OF TERMINAL BUILDING RENTAL RATES

Terminal Building Rental Rates shall be calculated for each Fiscal Year in the following manner, as illustrated on Exhibit C attached hereto and made a part hereof.

SECTION 7.05 CALCULATION OF LANDING FEE RATES

A Landing Fee Rate per one thousand (1,000) pounds of landed weight shall be calculated in each Fiscal Year in the following manner, as illustrated In Exhibit C.

SECTION 7.06 EXTRAORDINARY RATE ADJUSTMENTS

- A. In the event that, at any time during a Fiscal Year, any of the components of Terminal Building Cost, Landing Area Cost, Landing Area revenues or the Total Airline Landed Weight of Aircraft Arrivals of all Signatory Airlines varies materially (upward or downward ten percent (10%) or more) from the estimates used in setting the Average Terminal Building Rental Rate or Landing Fee Rate, such rates may be adjusted either upward or downward for the balance of such Fiscal Year if such adjustment is deemed necessary by City to ensure that adequate revenues will be available to cover the

estimated Terminal Building Requirement and Landing Area Requirement for the Fiscal Year.

SECTION 7.07 SETTLEMENT

Within one hundred eighty (180) days following the close of each Fiscal Year, or as soon as audited financial data for said Fiscal Year is available, rates for rentals, fees, and charges for the preceding Fiscal Year shall be recalculated using audited financial data and the methods set forth in this Agreement. Upon the determination of any difference(s) between the actual rentals, fees, and charges paid by Signatory Airlines (including Affiliates) during the preceding Fiscal Year and the rentals, fees, and charges that would have been paid by Signatory Airlines (including Affiliates) using said recalculated rates, City shall, in the event of overpayment, promptly issue payment to Airline in the amount of such overpayment, reduced by any accounts receivable due City greater than sixty (60) days, and in the event of underpayment, invoice Airline for the amount of such underpayment. Said invoiced amount shall be due within thirty (30) days of the invoice mailing date.

ARTICLE 8 - BOND ORDINANCE

SECTION 8.01 SUBORDINATION TO BOND ORDINANCE

- A. This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by City pursuant to the terms, covenants, and conditions of the Bond Ordinance.
- B. In conflicts between this Agreement and the Bond Ordinance, the Bond Ordinance shall govern except that no change in the method of calculation of rentals and fees payable shall govern to the extent that it materially adversely affects the rights of Airline hereunder.
- C. All definitional terms in this Article 8 that are not specifically defined herein are to have the meanings set forth in the Bond Ordinance.

SECTION 8.02 CREATION OF AND FLOW OF FUNDS

- A. Subject to the terms and provisions of the Bond Ordinance and other related instruments, it is mutually understood and agreed that, as long as any Bonds secured by the Bond Ordinance are outstanding, Bond proceeds and all Airport revenues shall be deposited, maintained, and paid as set forth in the Bond Ordinance, or if not specified in the Bond Ordinance, as set forth in Section 8.02(B). City shall maintain separate accounts as set forth in Section 8.02 (B), (C), and (D) for the purposes of accounting for all Airport revenues and expenses.

- B. Restricted Land Sales Fund. All revenues derived by City from activities conducted on property which was sold or leased to establish the Restricted Land Sales Fund shall be deposited in that fund. All such revenues (including interest earned on fund balances) shall remain in the fund unless expended for purposes deemed eligible by the FAA.
- C. PFC Fund. In compliance with federal regulations, all PFC revenue shall be deposited in a separate fund to be used to pay the costs of approved PFC projects and associated debt service. All interest earned in the PFC Fund shall remain in the PFC Fund and be used solely for approved projects.
- D. All other revenues derived from the Airport in each Fiscal Year shall be deposited, used, and applied in the following priority:
 - 1. To the Maintenance and Operating Expense Account, an amount sufficient to increase the balance in the account to at least the amount in the annual operating budget for Maintenance and Operating Expenses. Amounts shall be paid out of the Maintenance and Operating Account from time to time by City for the necessary expenses for the operation, maintenance, repairs, and ordinary replacement and reconstruction of the Airport.
 - 2. To the Debt Service Account, an amount equal to the aggregate annual amount of principal, interest, and any sinking fund requirements on any outstanding Bonds payable from annual Airport revenues.
 - 3. To the Debt Service Reserve Account, an amount required to maintain a balance at least equal to the maximum annual revenue bond debt service on all outstanding Airport Revenue Bonds issued by City. Amounts shall be paid out of the Debt Service Reserve Account, from time to time as necessary, to pay interest and principal due on any Bonds outstanding and payable from Airport revenue to the extent that other moneys are not available within the Debt Service Account. All interest earned in this account shall remain in the account until it is fully funded.
 - 4. To the Maintenance and Operating Reserve Account, an amount required to maintain in such account a balance equal to three-twelfths (3/12) the amount in the annual operating budget for Maintenance and Operating Expenses for the current Fiscal Year. Amounts shall be accumulated or reaccumulated and maintained as a contingency reserve in the Maintenance and Operating Reserve Account to be used only to prevent deficiencies in the payment of Maintenance and Operating Expenses from the Maintenance and

Operating Account. In this event, such moneys may be withdrawn from the Maintenance and Operating Reserve Account and transferred to the credit of the Maintenance and Operating Account.

5. To the Renewal and Replacement (R&R) Reserve Account, an amount required to maintain in such account a balance of no more than one million dollars (\$1,000,000.00). Such amounts shall be accumulated or reaccumulated and maintained as a contingency reserve in the Renewal and Replacement Reserve Account to be used only for emergency repairs or emergency replacement for the Airport. All interest earned in this account shall remain in the account until it is fully funded.
6. To the Equipment and Capital Outlay Account, an amount to pay for all equipment purchases, repairs, renewals, and replacements to the Airport and for all Equipment and Capital Outlays.
7. To the Capital Improvement Account, all remaining revenues to be used by City for any lawful Airport purposes.

SECTION 8.03 INITIAL DEPOSITS INTO MAINTENANCE AND OPERATING RESERVE ACCOUNT AND RENEWAL AND REPLACEMENT RESERVE ACCOUNT

City has funded the initial deposits to the Maintenance and Operating Reserve Account and Renewal and Replacement Reserve Account through cash balances on hand. Subsequent deposit requirements shall be included in the calculations of Signatory Airline Terminal Building Rentals and Landing Fees as set forth in Sections 7.04 and 7.05.

ARTICLE 9 - MAINTENANCE AND OPERATION OF AIRPORT

SECTION 9.01 DESIGNATION OF OPERATION AND MAINTENANCE RESPONSIBILITIES.

In addition to the obligations of Airline and City set forth in this Article 9, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

SECTION 9.02 CITY'S RESPONSIBILITIES

- A. City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such

maintenance, operation, or repair shall be Airline's obligation pursuant to Section 9.03 and Exhibit D.

- B. City shall, to the extent it is legally able to do so, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. City shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided in accordance with this Section 9.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by City's negligence or any other cause beyond reasonable control of City.
- D. City shall operate the Airport and shall exercise these rights in accordance with applicable laws and regulations.

SECTION 9.03 AIRLINE'S RESPONSIBILITIES

Subject to the provisions of Section 9.05:

- A. Airline shall, at all times, preserve and keep its Leased Premises in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have janitorial responsibilities designated to be those of City pursuant to Exhibit D.
- B. Airline shall operate and maintain at its own expense any improvements and/or equipment installed by Airline for the exclusive use of Airline, except for infrastructure improvements and equipment and facilities serving the entire Terminal Building.
- C. Airline shall not erect, maintain, or display on its Leased Premises or anywhere in the Terminal Building in the public view any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Director.

SECTION 9.04 CITY'S RIGHT OF ENTRY

City, by its Director or other authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right during normal business hours upon reasonable notice or, in the case of emergencies, without notice, to enter upon Airline's Leased Premises space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

- A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.

- B. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary if Airline fails to perform its obligations under this Agreement, and to recover the actual cost of such maintenance, cleaning, or repair from Airline, plus a fifteen-percent (15%) administrative charge from Airline on the next rent due.
- C. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary and which is the responsibility of City under this Agreement.
- D. For the purpose of exhibiting same to prospective tenants, purchasers or others.

The exercise of this right of entry shall not be deemed an eviction or disturbance of Airline's use or possession provided City shall exercise its best efforts not to interfere with Airline's normal operations in the Leased Premises.

SECTION 9.05 ALTERATIONS AND IMPROVEMENTS

- A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the Leased Premises without the prior written approval of Director.
- B. Plans and specifications for any such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and State and Federal laws and regulations.
- C. All Airline alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon expiration, or early termination, of this Agreement.

SECTION 9.06 ENVIRONMENTAL REGULATIONS

Airline shall comply with the following environmental regulations:

- A. Airline shall not cause or permit any Hazardous Materials, as defined in Section 1.01 herein, to be stored or used on or about the Airport by Airline, its agents, or employees, except in compliance with Environmental Laws as described below and as permitted by City in accordance with this Agreement.
- B. Airline shall, at all times and in all respects in connection with its use and occupancy of the Airport, comply with all present and hereinafter enacted local, state, and federal laws, ordinances, regulations, orders, and any

amendments thereto relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials on, about, or from the Airport. Without limiting the foregoing, Airline shall comply with Environmental Laws (as defined in Section 1.01 herein) at all times in connection with its use and occupancy of the Airport. Airline shall also comply with permits held by City as and to the extent Airline's activities may impact City's ability to comply with such permits including, but not limited to, the Airport stormwater permit issued pursuant to the Clean Water Act, the Municipal Separate Storm Water permit issued pursuant to the Clean Water Act or any reissued version of either permit, whether issued by the US EPA or the Texas Commission on Environmental Quality (TCEQ) or any predecessor agencies. This list of permits is provided by way of example only and is not intended to be fully inclusive. During the term of this Agreement, if City becomes aware of other permits, which are impacted by Airline's activities, it will provide Airline with written notice of those permits. When reasonably possible, City may provide Airline with written notice of any new permits or proposed changes to permits prior to issuance that may reasonably be expected to impact Airline's costs or operations in order to provide Airline with a reasonable opportunity to engage in the permitting process.

C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the Airport, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. Airline shall cause any and all Hazardous Materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of this Agreement, Airline shall cause all Hazardous Materials that are Airline's responsibility to be removed from the Airport as required by applicable Environmental Laws and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws. In addition, to the extent such Hazardous Materials are required by Environmental Laws to be remediated, Airline shall do so in compliance with such Environmental Laws provided, however, that Airline shall not take any remedial action in response to the presence of any Hazardous Materials on or about the Airport, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Airport without first notifying City in writing of Airline's intention to do so (except in cases of emergency where such notice is impracticable in which case Airline shall immediately take steps to

remediate and notify the City as soon as practicable) and affording City ample opportunity to appear, intervene, or otherwise appropriately assert and protect City's interest with respect thereto.

- D. If at any time Airline shall become aware, or have reasonable cause to believe, that any Hazardous Material has come to be located on or about the Airport in violation or potential violation of Environmental Laws, Airline shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide City with written notice of that condition. In addition, Airline shall immediately notify City in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Airline at the Airport pursuant to any Environmental Laws; (2) any claim made or threatened by any person against Airline or City relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials at the Airport. Airline shall make available for review by City any reports made by Airline to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Airline shall also supply to City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Airport or Airline's use thereof. Airline shall promptly deliver to City copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Airport by or on behalf of Airline except for routine disposals such as used oil or absorbent material, which shall be delivered upon request, unless required to be provided by applicable Environmental Law.

ARTICLE 10 - DAMAGE OR DESTRUCTION OF PREMISES

SECTION 10.01 DAMAGE OR DESTRUCTION

- A. If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the particular building, rooms, or other portion of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that City shall exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed.

If Director shall fail to notify Airline of its decision to repair any untenable Leased Premises within sixty (60) days after the destruction, City shall be deemed to have elected to terminate this Agreement as to the space damaged and destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage or destruction; provided that City shall exert commercially reasonable efforts to provide Airline with substitute space.

SECTION 10.02 DAMAGE CAUSED BY AIRLINE

Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Leased Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Leased Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds paid to City by reason of such damage or destruction (whether paid by Airline's insurer (which shall be the primary insurance) or by the City's insurer (which shall be the secondary insurance), Airline shall pay the amount of such additional costs to City.

ARTICLE 11 - INSURANCE AND INDEMNIFICATION

SECTION 11.01 INSURANCE

- A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits and coverage types as hereinafter stated, insuring against the liabilities set forth in this Section.
- B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and motor vehicle liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance companies shall be qualified to do business and be in good standing in Texas. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.
- C. Airline shall cause a certificate of insurance to be furnished to City within thirty (30) days from the effective date of this Agreement, evidencing such insurance coverage. A certificate of insurance shall be delivered to City at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Airline shall provide, at City's request, a copy

of the endorsement page or declaration page in lieu of the certificate. Each such certificate of insurance shall contain:

1. A statement of the coverage provided by the policy;
2. A statement certifying the City and its officers, directors, agents, and employees are listed as an additional insured in the policy;
3. A statement of the period during which the policy is in effect;
4. An agreement by the insurance company issuing such policy that the policy shall not be cancelled or any of the provisions changed for any reason whatsoever without at least thirty (30) days' prior written notice to City.

D. If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the reestablishment of the insurance of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline and permit City to terminate this Agreement pursuant to Section 14.03.

E. Airline, at its own expense, shall procure and maintain for the benefit of City and itself, as their respective interests shall appear, liability insurance with insurance underwriters, satisfactory to City and with the following minimum limits:

- i. Aircraft liability insurance and aviation general liability insurance, covering bodily injury, personal injury, property damage, products/completed operations liability, premise liability, and contractual liability, with a liability limit of not less than Two Hundred Fifty Million Dollars (\$250,000,000.00) combined single limit per occurrence, on occurrence form policy. Said limit shall be reduced to One Hundred Million Dollars (\$100,000,000.00) where Airline's maximum seating capacity on the largest aircraft operated at the Airport by Airline is sixty (60) or less. With respect to coverage for products/completed operations and personal injury, except with respect to passengers, a sublimit of not less than Twenty-Five Million Dollars (\$25,000,000.00) per occurrence, and in the annual aggregate, shall be permitted with the approval of the Director. Said aircraft liability shall be applicable to owned, non-owned, and hired aircraft.
- ii. Auto liability policy in a minimum amount of five million dollars (\$5,000,000) for both bodily injury and property damage.

- iii. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one million (\$1,000,000) limit each accident, disease aggregate, and disease each employee.
 - iv. Environmental impairment liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence. In lieu of environmental impairment liability insurance, Airline may submit proof of self-insurance by submitting a letter to City attesting to the limit and extent of coverage.
 - v. Liquor liability insurance for Airline serving alcoholic beverages in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence.
- F. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured throughout the term of the Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, or resulting from the negligent work, acts, operations, or omissions of Airline, its officers, agents, employees, invitees, and independent contractors on the Airport. Airline may show City as an additional insured with respect to Airline's operation at the Airport, provided, that Airline shall then also show on the insurance policy that liability insurance coverage also includes contractual liability.
- G. Any and all of the above insurance coverages shall be on an "occurrence" basis, not on a "claims made" basis.
- H. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations at the Airport.
- I. Airline shall require its Affiliates, contractors, and sublessees operating at the Airport to procure and maintain insurance coverage to adequately cover risks associated with such Affiliate, contractor, or sublessee, reasonably appropriate in their limits and other terms and conditions to the nature of the entity's operations. Such coverage shall insure the interests of the City and the City Indemnified Parties including by naming the City and City Indemnified Parties as additional insureds on such policies (except with respect to workers' compensation/employer's liability policies). When requested by the City, Airline shall provide, or cause to be provided, to the City certificates of insurance and copies of additional insured endorsements or such other evidence of insurance, reasonably acceptable in form and content to the City. Failure of any Affiliate,

contractor, or sublessee to comply with required coverage and terms and condition outlined herein will not limit Airline's liability or responsibility hereunder.

SECTION 11.02 INDEMNIFICATION

- A. INDEMNITY. EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY AS DETERMINED BY COURT OF COMPETENT JURISDICTION, AIRLINE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER, TO THE EXTENT ARISING OUT OF THIS AGREEMENT OR AIRLINE'S USE OF THE LEASED PREMISES OR THE AIRPORT ("CLAIMS").**

NOTHING HEREIN SHALL SERVE TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW NOR ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR AIRLINE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF CITY OR AIRLINE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF CITY FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.

AIRLINE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. AIRLINE SHALL UTILIZE LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE CITY, AND SUCH ACCEPTANCE SHALL NOT BE UNREASONABLY WITHHELD. AIRLINE WILL PROVIDE THE CITY WITH NOTICE OF ALL MEETINGS (INCLUDING THOSE RELATED TO SETTLEMENT) RELATED TO ANY CLAIM AGAINST THE CITY IN ADVANCE OF SUCH MEETING SO THAT THE CITY MAY ARRANGE TO OBSERVE PROVIDED THAT THE CITY SHALL BEAR THE COSTS OF SUCH OBSERVATION. THE CITY SHALL BE ALLOWED TO ATTEND AND PARTICIPATE IN ALL JUDICIAL PROCEEDINGS RELATED TO ANY CLAIM AGAINST THE CITY, PROVIDED THAT THE CITY SHALL BEAR THE COSTS OF SUCH PARTICIPATION. AIRLINE SHALL PROVIDE STATUS REPORTS AND INFORMATION REQUESTED BY THE CITY REGARDING ANY MEETINGS OR JUDICIAL PROCEEDINGS RELATED TO ANY CLAIM AGAINST THE CITY ON A TIMELY BASIS

AND SHALL NOT UNREASONABLY WITHHOLD SUCH INFORMATION. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT AIRLINE'S INDEMNITY OBLIGATIONS. AIRLINE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR AIRLINE, AS AIRLINE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY AIRLINE. IN NO EVENT MAY AIRLINE ADMIT LIABILITY ON THE PART OF CITY WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.

- B. **WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF AIRLINE'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.**
- C. **CLAIMS AGAINST AIRLINE. IF ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE AIRLINE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE LEASED PREMISES, AIRLINE SHALL GIVE WRITTEN NOTICE THEREOF TO CITY WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM, DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS, AND IF THE CLAIM IS NOT WRITTEN OR THE INFORMATION IS NOT DISCERNABLE FROM THE WRITTEN CLAIM, THE WRITTEN NOTICE SHALL STATE THE DATE OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAKING SUCH CLAIM OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION, OR PROCEEDING; AND THE NAME OF ANY PERSON AGAINST WHO SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY, P.O. BOX 1890, EL PASO, TEXAS 79950-1890 OR TO SUCH REVISED ADDRESS AS NOTIFIED BY DIRECTOR.**
- D. **NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT CITY'S ABILITY TO ADJUST RENTAL RATES AND OTHER FEES IN ACCORDANCE WITH THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICABLE LAWS AND REGULATIONS. FURTHERMORE, NO PROVISION IN THIS AGREEMENT IS INTENDED TO LIMIT CITY'S ABILITY TO ADJUST LANDING FEES OR IMPOSE**

OTHER FEES IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS.

- E. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE AIRLINE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE AIRLINE.**
- F. CITY ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE LEASED PREMISES OR ANY PART THEREOF, AND CITY IS HEREBY EXPRESSLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY THAT MAY BE SUSTAINED BY REASON OF THE OCCUPANCY OF THE LEASED PREMISES UNDER THIS AGREEMENT, UNLESS SAME IS CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CITY, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.**

SECTION 11.03 NON-LIABILITY OF CITY

City shall not in any event be liable for any acts or omissions of Airline, its officers, agents, employees, invitees and independent contractors, or for any conditions resulting from the operations or activities of any such lessee, tenant, or concessionaire, Airline officers, agents, employees, invitees, or independent contractors, or for any conditions resulting from the operations or activities of Airline's officers, agents, employees, invitees or independent contractors either to Airline or to any other person.

City shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof.

SECTION 11.04 RELEASE OF LIABILITY REGARDING CERTAIN DAMAGES

City shall not be liable for, and is hereby released from all liability to Airline, to Airline's insurance carrier, or to anyone claiming under or through Airline for any loss or damage whatsoever to the property or effects of Airline resulting from the accidental discharge or discharge beyond City's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin. The provisions of this Section 11.04 shall not be construed as a limitation of City's rights pursuant to Section 11.02, but are additional to the rights and exclusions from liability provided in Section 11.02.

ARTICLE 12 - ASSIGNMENT OR SUBLEASE

SECTION 12.01 GENERAL

Airline shall not at any time transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Agreement or any part of the Leased Premises. Airline shall not assign its interest under this Agreement or any part of the Leased Premises to any party without prior written approval of City. Any failure of Airline to obtain City's prior approval shall be a material breach of this Agreement.

SECTION 12.02 BANKRUPTCY

Section 12.01 shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee, or by Airline as a debtor in possession under the Bankruptcy Code of 1978, as amended, provided that adequate assurance of future performance as provided by the Bankruptcy Code of 1978, as amended, is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rentals, fees, and charges due under this Agreement upon the assumption or assignment of this Agreement;
- B. Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and
- C. The procurement of a bond from a financially reputable surety provider covering any costs or damages which City reasonably estimates City would incur in the event that City, within three (3) years following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the Leased Premises covered by this Agreement under Article 4.

SECTION 12.03 RELINQUISHMENT OF SPACE

If Airline desires to relinquish any of its Exclusive Use space or preferentially assigned areas, Airline will notify Director in writing of the space available, and Director shall use best efforts to reassign the space to another airline. No assignment, vacation, transfer, conveyance, or sublease by Airline shall relieve Airline of its responsibility for payment of rentals, fees, and charges and performance of all other obligations provided in this Agreement without specific written consent by the Director to such assignment, vacation, transfer, conveyance or sublease.

SECTION 12.04 CONSENT

Consent by City to any type of transfer provided for by this Article 12 shall not in any way be construed to relieve Airline from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

SECTION 12.05 CORPORATE REORGANIZATION

Notwithstanding anything contained in this Article 12 to the contrary, no consent shall be required for any transfer or assignment of Airline's interest in this Agreement by operation of law or otherwise in connection with a merger, consolidation or other corporate reorganizations, or in connection with a sale of all or substantially all of Airline's assets.

ARTICLE 13 - DEFAULTS

SECTION 13.01 DEFAULT

If Airline: (1) fails to pay rent or any other payment past due hereunder within ten (10) calendar days after receipt of written notice of a past due account; (2) fails to keep and perform any of its other covenants and agreements within ten (10) calendar days after receipt of written notice of such failure (or, if such failure cannot be cured in ten (10) days, Airline fails to commence within ten (10) days and diligently pursue such cure, subject to the prior written approval of the Director of Airline's plan to cure, which shall not be unreasonably withheld or delayed); or (3) after such agreed upon cure period as specified in (2) Airline still fails to continue to complete, in a timely manner, any of its covenants and agreements after performance is commenced, after receipt of written notice of such failure (and after the expiration of any applicable cure period as specified in such written notice, or, if such failure cannot be cured in such time, if Airlines fails to commence within such time and diligently pursue such cure, subject to the prior written approval of the Director, which shall not to be unreasonably withheld or delayed); or (4) after the filing of any petition, proceedings, or action by, for, or against Airline under any insolvency, bankruptcy, or reorganization act of law, then, at the election of City:

- A. Without terminating this Agreement, City may reenter the Leased Premises and improve and relet all or any part of it to others at its sole discretion. Any costs of renovation necessitated by the neglect of Airline, its agents, or its employees and an administrative fee to City for all costs incurred, shall be set off against relet rentals received. Airline shall promptly reimburse City for any deficiency in rentals or other payments received under such reletting, as compared to Airline's obligations hereunder.
- B. At any time before or after a reentry and reletting as provided in Section 13.01(A), City may terminate Airline's rights under this Agreement as provided in Section 14.03, without any restriction upon recovery by City for past due rentals and other obligations of Airline. City shall have all additional rights and remedies as may be provided to landlords by law.

- C. Notwithstanding any of the provisions hereof and at the discretion of the City, upon the occurrence of an event of default by Airline and after the expiration of any applicable notice and cure periods described above in Section 13.01, the term of this Agreement shall convert to month-to-month, commencing on the date of notice of conversion and may be terminated in accordance with the provisions of Section 14. The conversion of the term of this Agreement pursuant to this Section shall not discharge any of Airline's obligations hereunder nor affect any of City's other remedies set forth herein; provided, however, that the termination of this Agreement shall discharge subsequent Airline obligations hereunder. Upon the cure of any and all defaults to the reasonable satisfaction of the City, City and Airline will execute a new Agreement on the same terms as this agreement.

ARTICLE 14 - TERMINATION

SECTION 14.01 EVENTS PERMITTING TERMINATION BY AIRLINE

Airline may terminate this Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving City ninety (90) calendar days advance written notice only if: (1) Airline is prohibited by lawful authority from using the Airport for a period exceeding sixty (60) consecutive calendar days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport; or (2) City is in breach of any of the covenants or agreements contained in this Agreement which materially affect the operation of Airline for a period exceeding sixty (60) consecutive calendar days after receipt of written notice of such breach from Airline and City's failure to cure such breach.

SECTION 14.02 CONDITIONS OF PREMISES AT TERMINATION

Upon termination of this Agreement, Airline shall yield and deliver to City the Leased Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of Director, reasonable wear and tear and casualty not caused by Airline or Airline's responsibility pursuant to the provisions of this Agreement excepted.

SECTION 14.03 EVENTS PERMITTING TERMINATION BY CITY

Subject to the provisions of Section 13, City may terminate this Agreement and all of its obligations hereunder upon ninety (90) calendar days' written notice and may thereafter exercise all rights of entry and reentry upon the Leased Premises, with or without process of law, upon or after the occurrence of any one of the following events:

- A. Airline is in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Director has notified Airline in writing that payment was not received when due;

- B. Airline files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Airline's property;
- C. Airline makes any general assignment for the benefit of creditors;
- D. Airline abandons the Leased Premises, which shall be defined as a cessation of Airline's activities at the Leased Premises for more than thirty (30) days;
- E. Airline defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Airline, and such default continues after receipt of written notice from Director to cure such default in accordance with the provisions of Section 13;
- F. Airline is adjudged bankrupt in involuntary bankruptcy procedures;
- G. Airline is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Airline where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
- H. Airline reduces its regularly scheduled service at the Airport to less than two (2) flights per weekday unless such reduction of service is directly attributable to circumstances for which Airline is not responsible, and which are totally beyond its control;
- I. The abolition, limitation, or restriction by any act of the Texas Legislature or Law of Congress of the powers of City under which these premises are being leased, except with respect to legislation that grants authority to a successor;
- J. Airline fails to remit PFC revenue to City within the time limits established by federal regulation;
- K. Required redevelopment of the Airport caused by circumstances unplanned or uncontrolled by the Airport which necessitates relocation of Airline from the Leased Premises; or
- L. Airline violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement.

In any of the aforesaid events, City may take immediate possession of the Leased Premises including any and all improvements thereon and remove Airline's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of City to declare this Agreement canceled upon the default of Airline for any of the reasons set out shall not operate to bar or destroy the right of City to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by City from Airline after the expiration or cancellation of this Agreement, or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which City's consent is required or operate as a waiver of any right of City to retake and resume possession of the Leased Premises.

ARTICLE 15 - GENERAL PROVISIONS

SECTION 15.01 RULES AND REGULATIONS

- A. Airline shall observe and obey all Rules and Regulations established, promulgated, or adopted consistent with this Agreement from time to time during the term hereof, by City governing conduct on and operations at the Airport and use of its facilities. When reasonably possible, City shall provide Airline with notice prior to adoption of any new or amended Rules or Regulations in order to provide Airline with the opportunity to comment on same prior to adoption. Copies of the Rules and Regulations shall be forwarded to Airline's local manager upon request of Airline.
- B. Airline shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Airline's behalf to violate any such Rules and Regulations.

SECTION 15.02 COMPLIANCE WITH LAW

- A. Airline shall not use the Leased Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances and laws of any City, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Leased Premises.
- B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:
 - 1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all

federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.

2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use space (subject to prior written approval of City), equipment, and personal property that are required to comply with or conform to any such statutes and ordinances, and regulations which are promulgated or enacted by City.
3. Be and remain an independent contractor with respect to all installations, construction, and services performed by the Airline or on behalf of Airline hereunder.

SECTION 15.03 NONDISCRIMINATION

Airline acknowledges that the City is required by the FAA under the terms of its Grant Assurances to include in this Agreement certain required contract provisions, included as Exhibit G hereto ("Required Federal Provisions"). Airline agrees to comply with the Required Federal Provisions and, where applicable, include the Required Federal Provisions in each of its subcontracts without limitation or alteration. Airline acknowledges that a failure to comply with the Required Federal Provisions constitutes an event of default under this Agreement. Airline further acknowledges that the FAA may from time to time amend such required contract provisions and agrees that the City may unilaterally modify the Required Federal Provisions to the extent such modification is necessary to comply with its Grant Assurances by providing Airline with notification of such modification and an updated Exhibit G.

SECTION 15.04 AFFIRMATIVE ACTION

Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from City, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Section. Airline assures that it will require that its covered suborganizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

SECTION 15.05 NOTICES

- A. Any notice under the terms of this Agreement shall be in writing. If such notice is given by Airline, it shall be submitted to Director of Aviation, El Paso International Airport, 6701 Convair Road, El Paso, Texas 79925-

1091, or to such revised address as notified by Director. If given by Director, such notice shall be submitted to the address of Airline at the following address:

Attn: _____
ADDRESS: _____

- B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.
- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) or more days prior written notice to the other party in the manner set forth in this Section.

SECTION 15.06 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time ("Grant Assurances"). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, the City has the right to amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation. Airline further agrees that it shall not knowingly cause the City to violate any Grant Assurances made by the City to the federal government in connection with the granting of such Federal funds.

SECTION 15.07 NONWAIVER OF RIGHTS

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated shall never be construed to be a waiver of any other or succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of City of any of the provisions herein imposed upon Airline.

SECTION 15.08 FEDERAL AVIATION ACT, SECTION 308

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended or succeeded, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use space leased to Airline under the provisions of this Agreement.

SECTION 15.09 SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there shall be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

SECTION 15.10 HEADINGS

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

SECTION 15.11 ASSIGNMENT BY CITY OR OTHER SUCCESSOR IN INTEREST

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with respect to this Agreement and their rights and interests hereunder for any purpose relating to the issuance of Bonds or other revenue generating devices.

SECTION 15.12 REDEVELOPMENT

If this Agreement is terminated as provided by Section 14.03 (K) as a result of physical changes associated with the development of the Airport, Airline waives any and all rights to reimbursements, allowances, loans, or other forms of payment for relocation, rental or any other costs which might apply to tenants in other locations who are required to relocate due to construction of public facilities.

SECTION 15.13 REMOVAL OF DISABLED AIRCRAFT

Airline shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions) and place any such disabled aircraft in such storage area as may be designated by Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA

and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City.

SECTION 15.14 QUIET ENJOYMENT

City covenants and agrees that Airline on paying the rentals, fees and charges herein provided for and observing and keeping all the covenants, conditions, and terms of this Agreement, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Agreement without hindrance or molestation by City or any person claiming under City.

SECTION 15.15 AGREEMENT SUBJECT TO COVENANTS IN DEED

It is mutually agreed that this Agreement is made subject to the covenants, requirements, and restrictions contained in the Deed by which City obtained title to Airport from the Government of the United States.

SECTION 15.16 FORCE MAJEURE

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

SECTION 15.17 ENTIRE AGREEMENT

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

SECTION 15.18 TIME IS OF THE ESSENCE

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

SECTION 15.19 ATTORNEY'S FEES

If either party brings any action or proceedings to enforce, protect, or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

SECTION 15.20 AGREEMENT MADE IN TEXAS

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas or in the federal district courts of the Western District of Texas or in the U.S. Department of Transportation, as applicable.

SECTION 15.21 CUMULATIVE RIGHTS AND REMEDIES

All rights and remedies of City here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by City of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

SECTION 15.22 INTERPRETATION

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

SECTION 15.23 AGREEMENT MADE IN WRITING

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

SECTION 15.24 SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon City and Airline and their successors, assigns, legal representatives, heirs, executors and administrators.

SECTION 15.25 AUTHORIZATION TO ENTER LEASE

If Airline signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Airline warrants to City that Airline is a duly authorized and existing corporation, that Airline is qualified to do business in the State of Texas, that Airline has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Airline is authorized to do so. Upon Director's request, Airline will provide evidence satisfactory to Director confirming these representations.

SECTION 15.26 COMPLIANCE WITH ADA AND OTHER DISABLED ACCESS LAWS

Airline agrees that with respect to the Leased Premises, Airline shall be responsible, at Airline's cost, for compliance with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§12101 et seq.) and the regulations and Accessibility Guidelines

for Buildings and Facilities issued pursuant thereto. Airline recognizes that City is a public entity subject to Title II of the ADA. To the extent permitted by law, Airline shall assume and be obligated to comply with any obligations to which City may be subject to under Title II of the ADA with respect to any programs, services, activities, alterations, or construction conducted or undertaken by Airline in the Leased Premises. Airline shall also be responsible, at Airline's cost, for compliance with any other applicable disabled accessibility laws, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. §41705), and regulations implementing the ACAA.

SECTION 15.27 MOST FAVORED NATIONS

Each Air Transportation Company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rentals, charges, and fees with respect to facilities or equipment directly and substantially related to providing an Air Transportation Business as are applicable to all Air Transportation Companies which make similar use of the Airport and which use the same or similar facilities or equipment, subject to reasonable classifications such as tenants or non-tenants and Signatory Airlines or Non-Signatory Airlines. Classification as a Signatory Airline shall not be unreasonably withheld by the City provided the Air Transportation Company requesting such classification assumes obligations substantially similar to those imposed on other Signatory Airlines.

SECTION 15.28 AIRLINE DEREGULATION ACT

Nothing contained in this Agreement is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713), of any state or local law or ordinance, *or the Rules and Regulations*.

IN WITNESS WHEREOF, these presents have been executed, attested and ensealed by the parties hereto or their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first above written.

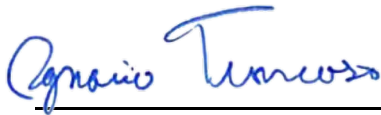
(Signatures begin on the following pages)

(City signature page)

CITY OF EL PASO

Cary Westin
City Manager

APPROVED AS TO FORM:



Ignacio R. Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 20____, by Cary Westin, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

(Airline signature page)

ATTEST:

AIRLINE: [COMPANY NAME]

Signature _____
 Printed Name: _____
 Title: _____
 Date: _____

Signature _____
 Printed Name: _____
 Title: _____
 Date: _____

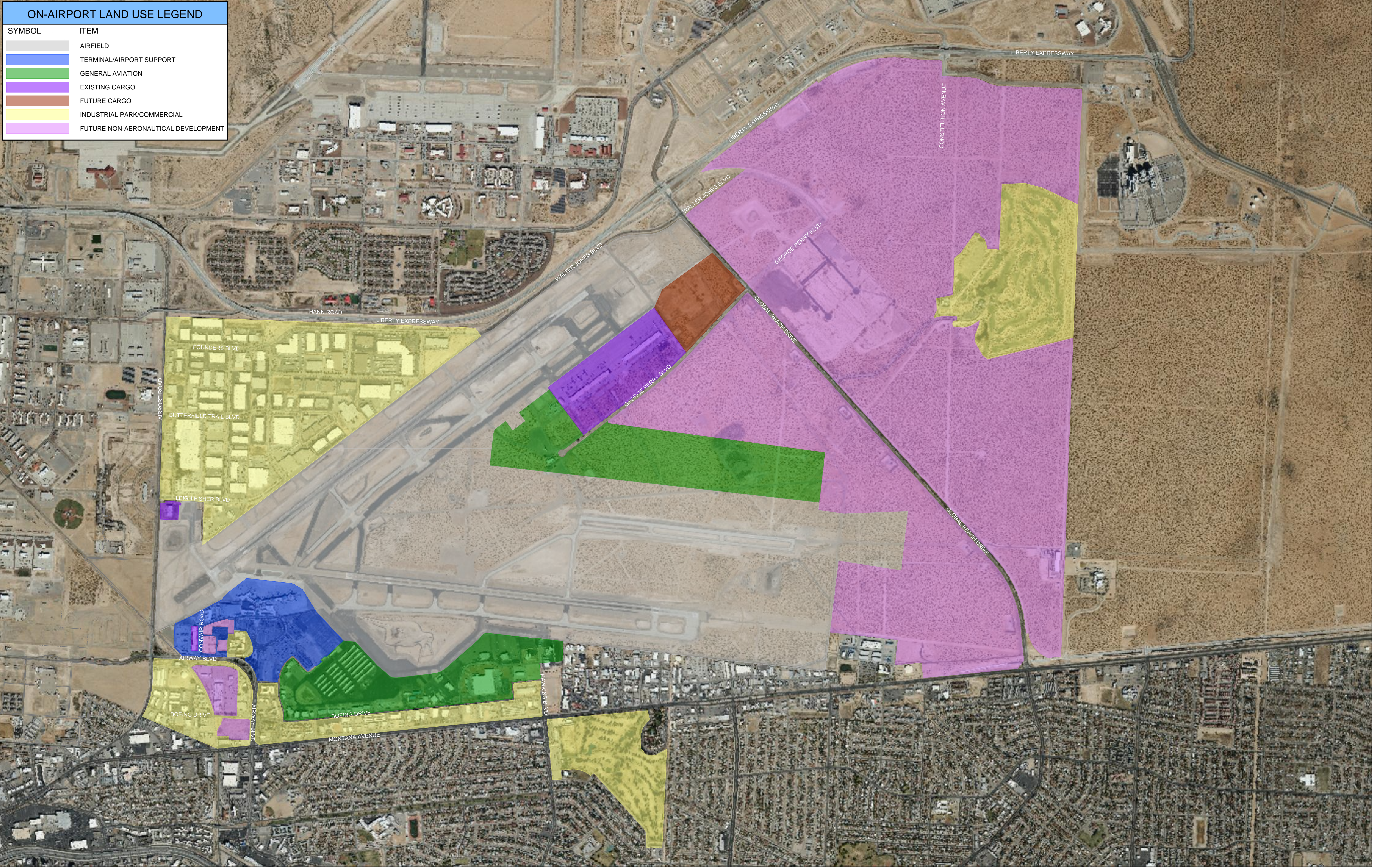
ACKNOWLEDGMENT

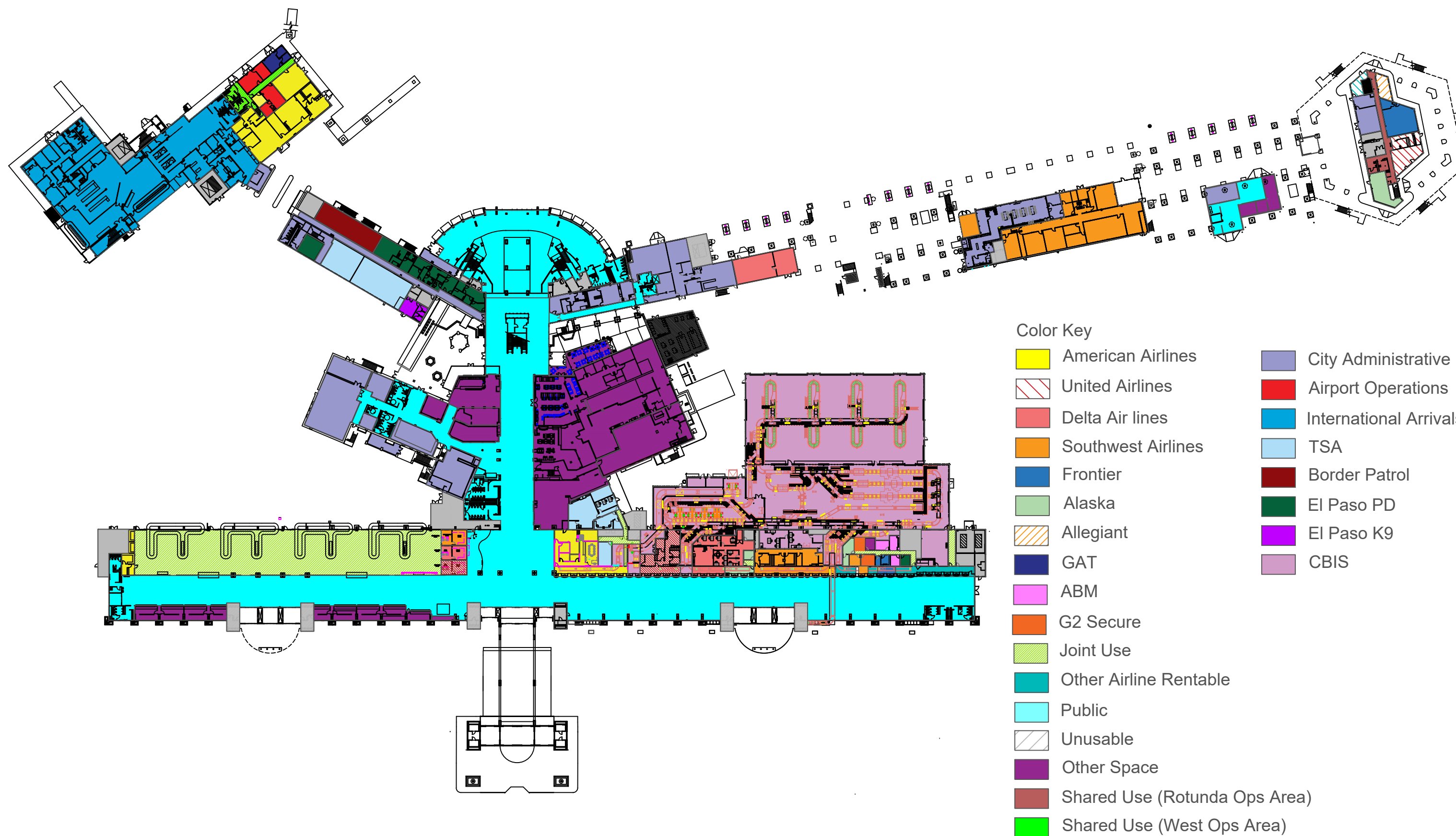
THE STATE OF _____)
_____)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 20__, by _____, as _____, of _____ (Airline).

My Commission Expires: _____

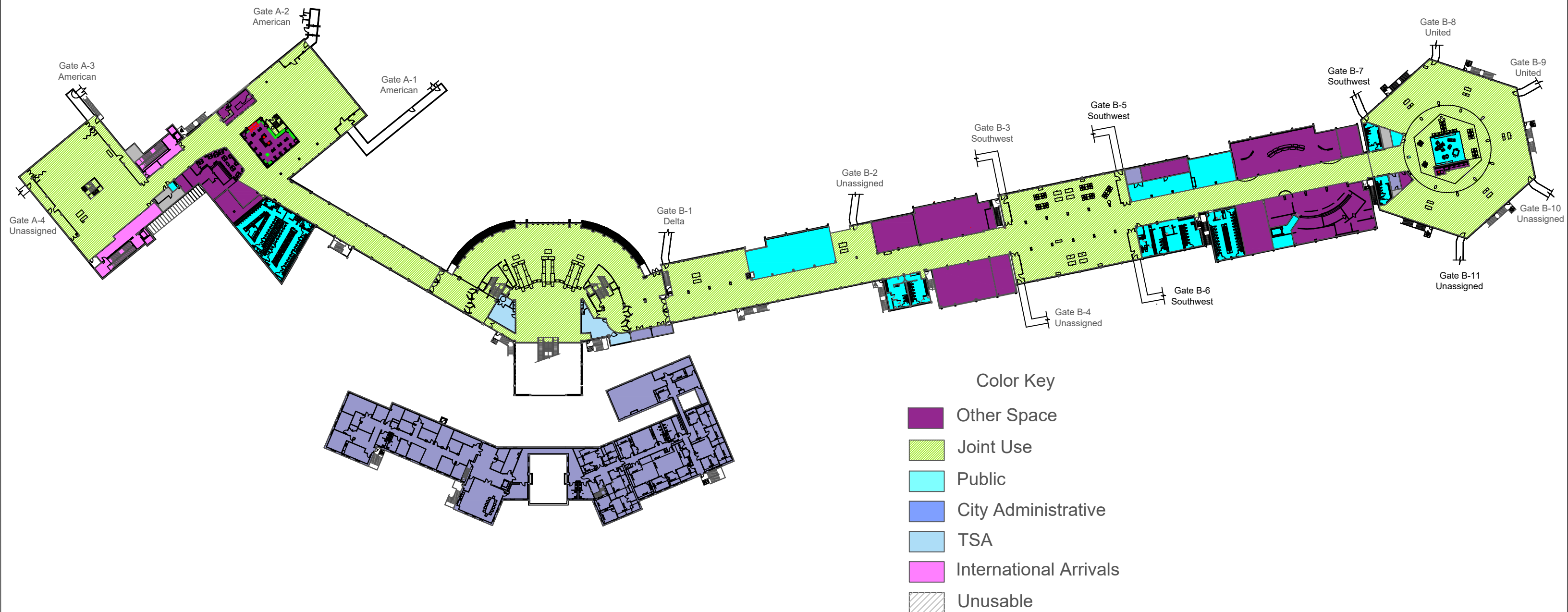
Notary Public, State of _____





El Paso International Airport - Airline Operating Agreement and Terminal Building Lease

Exhibit "B", drawing depicts terminal as of March 25, 2024 - Level 1



El Paso International Airport - Airline Operating Agreement and Terminal Building Lease

Exhibit "B", drawing depicts terminal as of March 25, 2024 - Level 2

EXHIBIT "C"
To
The El Paso International Airport Airline Operating Agreement And Terminal
Building Lease (The Agreement)

RATE AND FEE SCHEDULE

SECTION 1 DEFINITIONS

The following words, terms and phrases used in this Exhibit "C" shall have the meanings set forth in this Section and the meanings shall apply to both the singular and plural forms of such words, terms, and phrases. Additional words, terms and phrases used in this Exhibit "C", but not defined in this Section, shall have the meanings ascribed to them in the individual sections of this Exhibit "C", the Agreement or Bond Ordinance. The specific methodologies for calculating the rates, fees and charges defined below can be found in Section 2 of this Exhibit "C".

"Apron" means the area of the Airport where the aircraft are parked, unloaded or loaded, refueled or boarded.

"Checked Baggage Inspection System (CBIS)" means the automated baggage handling system overseen by the TSA that is responsible for detecting prohibited and dangerous items in passengers' checked baggage.

"CBIS Fee" means any Air Transportation Company using the CBIS shall pay a CBIS Fee per passenger in accordance with Table C-6 of this Exhibit "C".

"Federal Inspection Fee (FIS)" means a fee paid by an Air Transportation Company to process deplaned international passengers at the Airport.

"Fuel Flowage Fees" means total fees paid to the City for fuel distributed on the Airport.

"Gate Per Use Fee" means any non-Signatory Air Transportation Company using a gate, as described in Section 4.02 of the Agreement, on a non-preferential basis shall pay a Gate Per Use Fee for each Turn on such gate as presented in Table C-5 of this Exhibit "C".

"Joint Use Fee" means any Air Transport Company using Joint Use Premises shall pay a Joint Use Fee for each enplanement and Signatory Airlines shall pay a Joint Use Fee for each gate in accordance with Table C-3 of this Exhibit "C".

"Landing Area" means the area used or intended for use in landing, taking off, or taxiing of aircraft, excluding area and facilities for shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo.

“Landing Area Credit” means the sum of Non-Signatory Airline Landing Fees, equipment parking rentals, air cargo apron rentals, RON Fees, Fuel Flowage Fees, and other miscellaneous revenue that is used to offset the Landing Area Costs in the Signatory Airline Landing Fee Requirement.

“Landing Fee Rate” means the fee paid per one thousand (1,000) pound units of landed weight for use of the Landing Area, calculated pursuant to Table C-1 of this Exhibit “C”.

“Maintenance and Operating Reserve Account” means the reserve account for Maintenance and Operating Expenses that is required by the Bond Ordinance and described further in Section 8 of the Agreement.

“Non-Signatory Airline” means any Air Transportation Company that has not entered into an agreement, substantially similar to this Agreement, with the City.

“Non-Signatory Airline Premium” means the premium charged to airlines not signatory to the Agreement. For most fees, this is equal to 125 percent of the fees charged to Signatory Airlines.

“Passenger Security Screening Fees” means the fees charged for the security screening of passengers in the terminal, as calculated in Table C-7 of this Exhibit “C”.

“Remain Overnight (RON) Fees” means the fees charged to aircraft utilizing the Airport’s ramps/apron remaining overnight.

“Signatory Airline Landing Fee Requirement” means the Landing Area Cost credited with all revenues derived from the operation of the Landing Area (except revenues derived from Signatory Airline landing fees), as estimated by the City.

“Terminal Building” means the terminal building and connected concourses which serve Air Transportation Companies and other terminal tenants, as indicated on Exhibit B as such exhibits may be amended from time to time.

“Terminal Building Rental Rate” means the rate charged to the airlines for use of the Terminal Building as calculated in Table C-2 of this Exhibit “C”.

“Ticket Counter Per Use Fee” means any Air Transportation Company using a ticket counter on a non-preferential basis shall pay a Ticket Counter Per Use Fee for each Turn on such ticket counter as calculated in Table C-4 of this Exhibit “C”.

“Turn” means the arrival and subsequent departure of an aircraft at a gate at the Airport for any reason, including any tow to or from a gate.

SECTION 2 RATE CALCULATIONS

This section includes the methodology for calculating the Landing Fee Rate, Terminal Rental Rate, Joint Use Fee, Gate Per Use Fee, Ticket Counter Per Use Fee, Checked Baggage Inspection System Fees, Security Screening Fee for the Term of the Agreement. The rates for Fiscal Year 2024 are presented in this Exhibit and will be recalculated annually, prior to the start of the Fiscal Year.

1. Explanation of Landing Fee Rate Calculation Line Items. The following line items listed in Table C-1 are included in the calculation of the Landing Fee Rate for each rate setting period. Each line item in Table C-1 is identified by the corresponding letter set forth below.

Line Item A. Total Landing Area Costs. This line item includes the total of estimated direct and indirect Maintenance and Operating Expenses including any allocable bad debt expense allocable to the Landing Area, Equipment and Capital Outlays allocable to the Landing Area, Annual Amortization Recovery allocable to the Landing Area, the pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Landing Area, the estimated amount of any deficiency in the Renewal and Replacement Account as of the last day of the current Fiscal Year resulting from an expenditure allocable to the Landing Area, the pro rata portion allocable to the Landing Area of deposits to the Maintenance and Operating Reserve Account required in the Bond Ordinance, the pro rata portion allocable to the Landing Area of any other deposits to reserve accounts as set forth in Article 8 of the Agreement and established pursuant to the Bond Ordinance, and the estimated amount of any assessment, judgment, settlement, or charge to become payable by City net of proceeds of City's insurance relating directly to the Airport or its operation and allocable to the Landing Area.

Line Item B. Total Landing Area Credits. This line item includes all revenues derived from the operation of the Landing Area (except revenues derived from Signatory Airline landing fees), as estimated by the City.

Line Item C. Signatory Airline Landing Fee Requirement. This line item includes Total Landing Area Costs less Total Landing Area Credits.

Line Item D. Signatory Airline Landed Weight (1,000 lb units) - Passenger. This line item shall be equal to the estimated Signatory Airline Landed Weight of passenger airlines for the upcoming Fiscal Year.

Line Item E. Signatory Airline Landed Weight (1,000 lb units) - Cargo. This line item shall be equal to the estimated Signatory Airline Landed Weight of cargo airlines for the upcoming Fiscal Year.

Line Item F. Signatory Airline Landing Fee Rate (1,000 lb units). This line item shall be equal to Signatory Airline Landing Fee Requirement divided by the sum of Signatory Airline Landed Weight - Passenger and Signatory Airline Landed Weight - Cargo.

Line Item G. Non-Signatory Airline Premium. This line item shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item H. Non-Signatory Airline Landing Fee Rate (1,000lb units). This line item shall be equal to the product of Signatory Airline Landing Fee Rate and Non-Signatory Airline Premium.

Table C-1. Landing Fees		
Description	Line Item	FY 2024
Total Landing Area Costs	A	\$5,492,117
Total Landing Area Credits	B	\$1,705,302
Signatory Airline Landing Fee Requirement	$C = A - B$	\$3,786,815
Signatory Airline Landed Weight (1,000 lb units)-Passenger	D	2,189,675
Signatory Airline Landed Weight (1,000 lb units)-Cargo	E	591,175
Signatory Airline Landing Fee Rate (1,000 lb units)	$F = C / (D + E)$	\$1.36
Non-Signatory Airline Premium	G	125%
Non-Signatory Airline Landing Fee Rate (1,000 lb units)	$H = F * G$	\$1.70

2. Explanation of Terminal Building Rental Rate Calculation Line Items. The following line items listed in Table C-2 are included in the calculation of Terminal Building Rental Rate for each rate setting period. Each line item in Table C-2 is identified by the corresponding letter set forth below.

Line Item A. Terminal Building Cost. This line item includes the total of estimated direct and indirect Maintenance and Operating Expenses including any allocable bad debt expense allocable to the Terminal Building, Equipment and Capital Outlays allocable to the Terminal Building, Annual Amortization Recovery allocable to the Terminal Building, the pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Terminal Building, the estimated amount of any deficiency in the Renewal and Replacement Account as of the last day of the current Fiscal Year resulting from an expenditure allocable to the Terminal Building, the pro rata portion allocable to the Terminal Building of deposits to the

Maintenance and Operating Reserve Account required in the Bond Ordinance, the pro rata portion allocable to the Terminal Building of any other deposits to reserve accounts as set forth in Article 8 of the Agreement and established pursuant to the Bond Ordinance, and the estimated amount of any assessment, judgment, settlement, or charge to become payable by City net of proceeds of City's insurance relating directly to the Airport or its operation and allocable to the Terminal Building.

Line Item B. Terminal Building Credits. This line item shall be equal to the sum of direct electricity charges and Security Screening Fees.

Line Item C. Net Terminal Building Requirement. This line item shall be equal to the Signatory Terminal Building Cost less Terminal Building Credits.

Line Item D. Usable Space (square feet). This line includes the gross space in the Terminal Building at the Airport less mechanical and related storage space and service areas as identified on Exhibit B.

Line Item E. Signatory Airline Terminal Building Rental Rate. This line shall be equal to the estimated Net Terminal Building Requirement for the Fiscal Year divided by the total amount of Usable Space in the Terminal Building.

Line Item F. Non-Signatory Airline Premium. This line shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item G. Non-Signatory Airline Terminal Building Rental Rate. This line shall be equal to the product of the Signatory Airline Rental Rate and the Non-Signatory Airline premium.

Table C-2. Terminal Building Rental Rate		
Description	Line Item	FY 2024
Terminal Building Costs	A	\$16,918,847
Terminal Building Credits	B	\$668,076
Net Terminal Building Requirement	$C = A - B$	\$16,250,772
Usable Space (square feet)	D	334,811
Signatory Airline Terminal Building Rental Rate	$E = C / D$	\$48.54
Non-Signatory Airline Premium	F	125%

Non-Signatory Airline Terminal Building Rental Rate	$G = E * F$	\$60.67
-----------------------------------------------------	-------------	---------

3. Explanation of Joint Use Fee Calculation Line Items. The following line items listed in Table C-3 are included in the calculation of Joint Use Fee for each rate setting period. Each line item in Table C-3 is identified by the corresponding letter set forth below.

Line Item A. Total Joint Use Space. This line item shall be equal to Total Joint Use Space in the Terminal Building.

Line Item B. Terminal Building Rental Rate. This line item shall be equal to the Signatory Terminal Building Rental Rate calculated in Table C-2.

Line Item C. Total Joint Use Premises Requirement. This line item shall be equal to the Total Joint Use Space multiplied by the Signatory Terminal Building Rental Rate.

Line Item D. Gate Per Use Fee Revenue. This line item shall be equal to the Gate Per Use Fee (\$125.00, as described in Table C-5) multiplied by the total number of Turns for all airlines in the upcoming Fiscal Year.

Line Item E. Net Joint Use Space Requirement. This line item shall be equal to Total Joint Use Premises Space multiplied by Signatory Terminal Building Rental Rate minus Gate Per Use Fee Revenue.

Line Item F. Total Enplaned Passengers. This line item is the sum of the estimated Signatory Airlines Enplaned Passengers and Non-Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item G. Average Joint Use Fee Per Enplaned Passenger. This line item is the Net Joint Use Space Requirement divided by Total Enplaned Passengers.

Line Item H. Non-Signatory Airline Premium. This line item shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item I. Non-Signatory Joint Use Fee Per Enplaned Passenger. This line item is the Average Joint Use Fee Per Enplaned Passenger multiplied by the Non-Signatory Airline Premium.

Line Item J. Non-Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Non-Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item K. Non-Signatory Joint Use Space Requirement. This line item shall be equal to the Non-Signatory Joint Use Fee Per Enplaned Passenger multiplied by Non-Signatory Airlines Enplaned Passengers.

Line Item L. Signatory Joint Use Space Requirement. This line item shall be equal to the Joint Use Space Requirement less the Non-Signatory Requirement.

Line Item M. Enplaned Passenger Share. This line item should be equal to Eighty percent (80%).

Line Item N. Gate Share. This line item should be equal to Twenty percent (20%).

Line Item O. Enplaned Passenger Joint Use Space Requirement. This line item shall be equal to the Signatory Joint Use Space Requirement multiplied by Enplaned Passenger Share.

Line Item P. Gate Joint Use Space Requirement. This line item shall be equal to the Signatory Joint Use Space Requirement multiplied by Gate Share.

Line Item Q. Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item R. Signatory Joint Use Fee Per Enplaned Passenger. This line item shall be equal to the Signatory Joint Use Space Requirement divided by Signatory Airlines Enplaned Passengers.

Line Item S. Number of Preferentially Assigned Gates. This line item shall be equal to the number of preferentially assigned Gates in the upcoming Fiscal Year.

Line Item T. Signatory Joint Use Fee Per Gate. This line item shall be equal to the Gate Joint Use Space Requirement divided by the Number of Preferential Assigned Gates.

Table C-3. Joint Use Fee		
Description	Line Item	FY 2024
Total Joint Use Space (square feet)	A	103,004
Signatory Terminal Building Rental Rate	B	\$48.54
Total Joint Use Premises Requirement	$C = A * B$	\$4,999,521
Gate Per Use Revenues	D	\$272,500
Net Joint Use Space Requirement	$E = C - D$	\$4,727,021
Total Enplaned Passengers	F	2,071,635
Average Joint Use Fee Per Enplaned Passenger	$G = E / F$	\$2.28
Non-Signatory Airline Premium	H	125%
Non-Signatory Joint Use Fee Per Enplaned Passenger	$I = G * H$	\$2.85
Non-Signatory Airlines Enplaned Passengers	J	133,077
Non-Signatory Joint Use Space Requirement	$K = I * J$	\$379,566
Signatory Joint Use Space Requirement	$L = E - K$	\$4,347,454
Enplaned Passenger Share	M	80%
Gate Share	N	20%
Enplaned Passenger Joint Use Space Requirement	$O = L * M$	\$3,477,964
Gate Joint Use Space Requirement	$P = L * N$	\$869,491
Signatory Airlines Enplaned Passengers	Q	1,938,558
Signatory Joint Use Fee Per Enplaned Passenger	$R = O / Q$	\$1.79
Number of Preferentially Assigned Gates	S	10
Signatory Joint Use Fee Per Gate	$T = P / S$	\$86,949

4. Explanation of Ticket Counter Per Use Fee Calculation Line Items. The following line items listed in Table C-4 are included in the calculation of Ticket Counter Per Use Fee for each rate setting period. Each line item in Table C-4 is identified by the corresponding letter set forth below.

Line Item A. Average Ticket Counter Square Feet. This line item shall be equal to the average square footage for one ticket counter.

Line Item B. Signatory Airline Terminal Building Rental Rate. This line item includes the estimated Terminal Building Requirement for the Fiscal

Year divided by the total amount of Usable Space in the Terminal Building to determine the Signatory Airline Terminal Building Rental Rate per square foot, as shown in Exhibit C-2.

Line Item C. Annual Ticket Counter Cost. This line item shall be equal to the product of Average Ticket Counter Square Feet and the Signatory Airline Terminal Building Rental Rate.

Line Item D. Days Ticket Counter in Use. This line item shall be equal to Three Hundred and Sixty-Five (365).

Line Item E. Turns Per Day. This line item shall be equal to the estimated turns occurring per Gate per day.

Line Item F. Ticket Counter Per Use Fee. This Line item shall be equal to the Annual Ticket Counter Cost divided by Days Ticket Counter in Use divided by Turns Per Day.

Line Item G. Non-Signatory Airline Premium. This line shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item H. Non-Signatory Airline Ticket Counter Per Use Fee. This line item shall be equal to the product of the Signatory Airline Ticket Counter Per Use Fee and the Non-Signatory Airline Premium.

Table C-4. Ticket Counter Per Use Fee		
Description	Line Item	FY 2024
Average Ticket Counter Square Feet	A	253
Signatory Airline Terminal Building Rental Rate	B	\$48.54
Annual Ticket Counter Cost	$C = A * B$	\$12,280
Days Ticket Counter in Use	D	365
Turns Per Day	E	3
Ticket Counter Per Use Fee	$F = C / D / E$	\$11.21
Non-Signatory Airline Premium	G	125%
Non-Signatory Airline Ticket Counter Per Use Fee	$H = F * G$	\$14.02

5. Explanation of Gate Per Use Fee Calculation Line Items. The line item listed in Table C-5 is the Gate Per Use Fee for each rate setting period. The line item in Table C-5 is identified by the corresponding letter set forth below.

Line Item A. Gate Per Use Fee. This line item shall be equal to One Hundred and Twenty-Five (125) dollars.

Table C-5. Gate Per Use Fee		
Gate Per Use Fee (per turn)	A	\$125.00

6. Explanation of Checked Baggage Inspection System (CBIS) Fee Calculation Line Items. The following line items listed in Table C-6 are included in the calculation of CBIS Fee for each rate setting period. Each line item in Table C-6 is identified by the corresponding letter set forth below.

Line Item A. Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item B. Non-Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Non-Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item C. Total Enplaned Passengers. This line item is the sum of the Signatory Airlines Enplaned Passengers and Non-Signatory Airlines Enplaned Passengers line items.

Line Item D. Total CBIS Costs. This line item shall be equal to the sum of M&O Expenses, back up parts, electricity, water, natural gas, and administration costs associated with the CBIS.

Line Item E. Non-Signatory Airline Revenue Credit. This line item shall be equal to the product of Non-Signatory CBIS Fee Per Enplaned Passenger and Non-Signatory Airlines Enplaned Passengers.

Line Item F. Signatory Airline CBIS Requirement. This line item shall be equal to the Total CBIS Costs less Non-Signatory Airline Revenue Credit.

Line Item G. Signatory Airline CBIS Fee Per Enplaned Passenger. This line item shall be equal to Signatory Airline CBIS Requirement divided by Signatory Airlines Enplaned Passengers.

Line Item H. Non-Signatory Airline Premium. This line item shall be equal to One Hundred and Twenty-Five Percent (125%).

Line Item I. Non-Signatory Airline CBIS Fee Per Enplaned Passenger. This line item shall be the product of Signatory Airline CBIS Fee Per Enplaned Passenger and the Non-Signatory Airline Premium.

Table C-6. CBIS Fee		
Description	Line Item	FY 2024
Signatory Airlines Enplaned Passengers	A	1,938,558
Non-Signatory Airlines Enplaned Passengers	B	135,052
Total Enplaned Passengers	$C = A + B$	2,073,609
Total CBIS Costs	D	\$1,278,300
Non-Signatory Airline CBIS Revenue Credit	$E = H * B$	\$102,400
Signatory Airline CBIS Requirement	$F = D - E$	\$1,175,900
Signatory Airline CBIS Fee Per Enplaned Passenger	$G = F / A$	\$0.61
Non-Signatory Airline Premium	H	125%
Non-Signatory Airline CBIS Fee Per Enplaned Passenger	$I = G * H$	\$0.76

7. Explanation of Security Screening Fee Calculation Line Items. The following line items listed in Table C-7 are included in the calculation of Security Screening Fee for each rate setting period. Each line item in Table C-7 is identified by the corresponding letter set forth below.

Line Item A. Law Enforcement Officer Operating Expenses. This amount shall be the City's actual cost of providing armed law enforcement support for the security screening operation in the Terminal Building as required by 49 CFR Part 1542.

Line Item B. Total Enplaned Passengers. This line item shall be equal to the estimated Total Enplaned Passengers for the upcoming Fiscal Year.

Line Item C. Security Screening Fee. This line shall be equal to the Law Enforcement Officer Operating Expenses divided by Total Enplaned Passengers.

Table C-7. Security Screening Fee		
Description	Line Item	FY 2024
Law Enforcement Officer Operating Expenses	A	\$322,355
Total Enplaned Passengers	B	2,073,609
Security Screening Fee	$C = A / B$	\$0.16

**ATTACHMENT “C-1”
TO EXHIBIT “C”**

**STATEMENT OF RATES
FISCAL YEAR 2024**

(September 1, 2023, through August 31, 2024)

Section 1 – FY 2024 SUMMARY OF RATES

1. Landing Fee Rate. Signatory Airline: \$1.36 per 1,000 pounds of Maximum Gross Landed Weight. Non-Signatory Airline: \$1.70 per 1,000 pounds of Maximum Gross Landed Weight.
2. Terminal Building Rental Rate. Signatory Airline: \$48.54 per square foot. Non-Signatory Airline: \$60.67 per square foot.
3. Joint Use Fee. Signatory Airline: \$1.79 per Enplaned Passenger, \$86,949 per Preferentially Assigned Gate. Non-Signatory Airline: \$2.85 per Enplaned Passenger.
4. Ticket Counter Per Use Fee. Signatory Airline: \$11.21 per Turn. Non-Signatory Airline: \$14.01 per Turn.
5. Gate Per Use Fee. Signatory Airline: \$125.00 per Turn. Non-Signatory Airline: \$125.00 per Turn.
6. Checked Baggage Inspection System Fee. Signatory Airline: \$0.61 per Enplaned Passenger. Non-Signatory Airline: \$0.76 per Enplaned Passenger.
7. Security Screening Fee. Signatory Airline: \$0.16 per Enplaned Passenger. Non-Signatory Airline: \$0.16 per Enplaned Passenger.
8. RON Fee. \$20.00 per Night.
9. Airline Direct Electricity Charges. \$3.24 per square foot of rented airline Exclusive Use Premises.
10. Equipment Parking Rentals. \$2.96 per square foot.
11. FIS Fee. \$7.00 per Deplaned Passenger utilizing FIS facilities in the International Arrivals Area.

OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES AIRLINES AND CITY

The following matrix identifies the responsible party (either the City or Airline) who shall, at its sole cost, be responsible for the maintenance, repair, service, and/or provision of the specifically identified Premises, appurtenances, or services in connection with the operation or maintenance. The City shall not be responsible for any prior or subsequent installation, appurtenance or system by Airline. The City shall not be responsible for any prior or subsequent Airline modification of City-provided Airline Premises, appurtenance, system or service. Airline shall have the duty to restore the Premises, at its sole cost, into the original condition prior to vacating Airline's Premises, including the de-installation of any Airline modification and Airline appurtenance, system or service, at the sole discretion of the City. If Airline is positively determined to have damaged Premises or misused an City-provided appurtenance or system, said Airline may be charged for maintenance and repairs.

NOTE 1: All installations, repairs, replacements, alterations, or improvements undertaken by Airline must first be submitted for approval by the City.

NOTE 2: The responsibilities of the City listed below apply to normal wear and tear only. Any damage caused by Airline's negligence will be the responsibility of the Airline.

NOTE 3: All operations, maintenance and service responsibilities in Public Use Space is the responsibility of the City, except when damage is caused by Airline's negligence.

NOTE 4: Airline shall notify City, in writing, of any maintenance or repairs needed which are the responsibility of the City.

LEGEND	
ELP = City	N/A = Not Applicable
A = Airline	

A. OPS, MAINTENANCE AND SERVICE AREAS	SPACE						
	EXCLUSIVE				SHARED	JOINT	
	PREFERENTIAL SPACE (Ticket Counter)	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED SPACE	HOLD ROOMS	BAG CLAIM
BUILDING - EXTERIOR							
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation and Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Lighting Mounted on Outside of Building	N/A	ELP	N/A	ELP	ELP	ELP	ELP
Roof	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Walls and Load-Bearing Structures	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Windows	N/A	N/A	N/A	ELP	ELP	ELP	ELP
BUILDING INTERIOR							
Backwall Finish and Signage	A	N/A	A	N/A	N/A	A	N/A
Counter Shell/Exterior Casement, Countertops	ELP	N/A	N/A	N/A	N/A	ELP	N/A
Counter Insert Cabinetry, Kiosks	A	N/A	N/A	N/A	N/A	A	N/A
Ceiling Tiles	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Flooring: Carpet & Tile	A	A	A	A	A	ELP	ELP
Furnishings and Fixtures	A	A	A	A	A	ELP	ELP
HVAC: Building System Maintenance & Air Distribution	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation/Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Interior Wall Windows	A	A	A	A	A	ELP	ELP
Paint and Wall Finishes ¹	A	A	A	A	A	ELP	ELP
Passenger Seating - Installation and Maintenance	N/A	N/A	N/A	N/A	N/A	ELP	ELP
Stanchions	A	N/A	A	N/A	N/A	A	N/A
COMMUNICATIONS							
Public Address System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Communication Lines/Conduit: To D-Mark ²	A	A	A	A	A	A	A
Communication Lines/Conduit: From D-Mark ²	ELP	ELP	ELP	ELP	ELP	ELP	ELP
FIDS (City owned)	N/A	N/A	N/A	N/A	N/A	ELP	ELP
DOOR LOCKS, LOCKSETS AND KEYS							
ELP-Required locks, locksets and keys ³	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Non-ELP required	A	A	A	A	A	ELP	ELP
EQUIPMENT AND COMPUTER SYSTEMS							
Airline Proprietary Computer System	A	A	A	A	N/A	A	N/A
Airline Ticketing and Gate Equipment	A	A	A	A	N/A	A	N/A
Broadband Access	A	A	A	A	N/A	A	N/A
Radio, Meteorological and Aerial Navigation Equipment	A	A	A	A	N/A	A	N/A
Ticket Counter Scales	A	N/A	N/A	N/A	N/A	N/A	N/A
FIRE ALARM SYSTEM & OTHER EQUIPMENT							
Fire Alarm System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Fire Extinguishers ⁴	A	A	A	A	A	ELP	ELP

OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES AIRLINES AND CITY

		SPACE						
		EXCLUSIVE				JOINT		
A. OPS, MAINTENANCE AND SERVICE AREAS		PREFERENTIAL SPACE (Ticket Counter)	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED	HOLD ROOMS	BAG CLAIM
FIXTURES, ELECTRICAL/ENERGY (CONT.)								
Bulb & Tube Replacement (real property installed)		ELP	ELP	ELP	ELP	ELP	ELP	ELP
Maintenance		ELP	ELP	ELP	ELP	ELP	ELP	ELP
Power supply protection ⁵		A	A	A	A	A	A	ELP
JANITORIAL AND RECYCLING SERVICES								
Recycling of Paper, Plastic and Cardboard ⁶		A	A	A	A	N/A	ELP	ELP
Tenant Space (including Floors and Tenant Restroom Areas)		A	A	A	A	ELP	ELP	ELP
Window Cleaning - Appurtenant to Tenant Space (Int. & Ext.)		A	A	A	A	ELP	ELP	ELP
Window Cleaning - All Others (Interior & Exterior)						ELP	ELP	ELP
Shampoo Carpets/Wax Floors		ELP	A	A	A	ELP	ELP	ELP
PEST CONTROL								
Rodents and Insects ⁷		ELP	ELP	ELP	ELP	ELP	ELP	ELP
PLUMBING AND SEWER								
Incoming Water Line from Common Use Water Line to Fixture		N/A	ELP	N/A	ELP	ELP	N/A	N/A
Sanitary Sewer Line		N/A	ELP	N/A	ELP	ELP	N/A	N/A
Restrooms/Breakrooms (Fixture Repair & Replacement)		N/A	A	N/A	A	ELP	N/A	N/A
SIGNS								
Ticket Counter Backwall/Above Ticket Counter		A	N/A	A	N/A	N/A	N/A	N/A
Concourses: Podium Backwall/Holdroom walls		N/A	N/A	N/A	N/A	N/A	A	N/A
Directional/Informational Signage		ELP	N/A	N/A	N/A	N/A	ELP	ELP
TRASH REMOVAL								
Trash Removal (City will provide dumpster/compactor)		A ⁸	A	A	A	A	ELP ⁹	ELP

		SPACE		
B. BAGGAGE CONVEYANCE SYSTEM		PREFERENTIAL SPACE (Ticket Counter)	BAG MAKEUP	BAG CLAIM
BAGGAGE CONVEYANCE SYSTEM AND CAROUSELS				
Repair and Maintenance		A	A	ELP

		SERVICES					
C. RAMP AREAS		SNOW REMOVAL	RAMP SCRUBBING	PAVEMENT PAINTING	SPILLS	MAINTENANCE	JANITORIAL AND TRASH REMOVAL
JET BRIDGES (City Owned)						ELP	A ¹⁰
LIFTING DEVICE (City Owned)						ELP	
RAMP MAINTENANCE (Including Jet Bridge Ramp Areas)		ELP	ELP	ELP	A ¹¹		ELP

FOOTNOTES:

¹City will paint walls one time during the five year term of the agreement. Airline will be charged back for any additional paint requests.

²D-Mark is defined as the point in the terminal building where telecommunication's lines ends and the City's begins.

³Replacement of keys will be charged back to Airline

⁴Airlines are responsible for their own ramp gate fire extinguishers.

⁵Airline is responsible for providing adequate power supply protection for all vital services and important equipment sensitive to voltage drops, voltage spikes, or temporary power outages as may occur from time to time.

⁶City will provide dumpsters for recyclables.

⁷ Regularly scheduled service only.

⁸Airline will remove trash from curbside check-in counter.

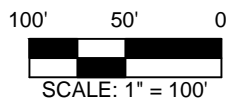
⁹City will remove trash from containers for public use. Airline will remove trash from their operations.

¹⁰Airline shall safely and properly collect and dispose of bio-hazards and other hazmat from their aircraft and provide trash removal from their jet bridges.

¹¹City will mitigate any ineffective response and charge Airline for the clean-up.



ASSIGNED EQUIPMENT PARKING SPACES	
ALL PARKING SPACES - 1,600 SQ.FT.	
1	DELTA AIRLINES
2-6	SOUTHWEST AIRLINES
7-8	UNASSIGNED
9-10	AMERICAN AIRLINES
11-15	UNASSIGNED





Monthly Activity Report - CHARTERS

Due on or before the 10th day of each month

Activity Report for the Month of:

Airport: ELP

Airline Name:

E-mail report to: ELPreports@elpasotexas.gov

For more info call: (915) 212-7303

Date:

Brenda Garcia-Olivas, Airport Terminal Services Manager

Passangers	Enplaned	Deplaned	Totals
Revenue	<input type="text"/>	<input type="text"/>	-
Non-Revenue	<input type="text"/>	<input type="text"/>	-
Total Passengers	-	-	

Aircraft Type	# of Landings	Aircraft Max Landing Weight (in lbs)	Total Weight
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
TOTALS	-		-

	Enplaned	Deplaned	Totals
Ticket counter	<input type="text"/>	<input type="text"/>	0
AIR Freight (lbs)	<input type="text"/>	<input type="text"/>	
International Freight (lbs)	<input type="text"/>	<input type="text"/>	0

Contact information for individual submitting reports:

Carrier Rep:

Title:

Telephone:

Email:

EXHIBIT "G"

Federal Aviation Administration Required Provisions

A. General Civil Rights Clause.

1. In all its activities within the scope of its airport program, Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee.
2. The above provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration.

B. Compliance with Nondiscrimination Provisions. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as "Contractor") agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Lessor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the

information, the Contractor will so certify to Lessor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, Lessor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as Lessor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request Lessor to enter into any litigation to protect the interests of Lessor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975

- and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
 11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. 74087 (2005));
 12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

D. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

1. Lessee for itself, its, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

E. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Lessee, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin,

will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

2. With respect to the Lease, in the event of breach of any of the above Non-discrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

Subcontracts. Lessee agrees that it shall insert in any subcontracts the clauses set forth in paragraphs (A) through (E) above and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. Lessee shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (E).

EL PASO INTERNATIONAL AIRPORT
NON-SIGNATORY AIRLINE OPERATING
AGREEMENT

BY AND BETWEEN

THE CITY OF EL PASO

AND

AIRLINE

NON-SIGNATORY AIRLINE OPERATING AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1	DEFINITIONS
Section 1.01	Definitions
Section 1.02	Cross-References
ARTICLE 2	TERM
Section 2.01	Term
Section 2.02	Termination of Existing Agreements
Section 2.03	Holding Over
Section 2.04	Extension
ARTICLE 3	RIGHTS AND SPECIFIC PRIVILEGES
Section 3.01	Use of the Airport
Section 3.02	Specific Rights of Airline at the Airport
Section 3.03	Employee Parking Facilities
Section 3.04	Limitations on Use by Airline
Section 3.05	Airport Use Summary
ARTICLE 4	PREMISES
Section 4.01	Premises
Section 4.02	Equipment and Aircraft Parking Areas and Holdrooms
Section 4.03	Accommodation of Airline and Other Airlines
Section 4.04	Use of City Loading Bridges
Section 4.05	Use of City Lifting Device
Section 4.06	Requirement to Remain in Confines of Exclusive Use Space
Section 4.07	Reassignment of Leased Space During Construction
Section 4.08	Surrender of the Premises
Section 4.09	Access
ARTICLE 5	CAPITAL IMPROVEMENTS AND EQUIPMENT AND CAPITAL OUTLAYS
Section 5.01	Capital Improvements
Section 5.02	Equipment and Capital Outlays
ARTICLE 6	REPORTS, RENTALS, CHARGES, AND FEES
Section 6.01	General
Section 6.02	Monthly Activity Report
Section 6.03	Terminal Building Rentals
Section 6.04	Electricity Charges for Extraordinary Usage

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 6	REPORTS, RENTALS, CHARGES, AND FEES (Continued)
Section 6.05	Landing Fees 26
Section 6.06	Equipment Parking Rentals 26
Section 6.07	Security Screening Fee..... 26
Section 6.08	Airline Equipment or Improvement Charges 26
Section 6.09	International Arrivals Area Charges 27
Section 6.10	City-Owned Loading Bridge Charge 27
Section 6.11	Payment Provisions/Interest on Overdue Amounts 27
Section 6.12	Taxes and Other Charges..... 28
Section 6.13	Passenger Facility Charge..... 28
Section 6.14	Records of Airline 28
Section 6.15	Other Fees and Charges 28
Section 6.16	Right of Set Off 29
Section 6.17	Security Deposit..... 29
Section 6.18	No Other Fees and Charges..... 30
ARTICLE 7	CALCULATION OF RENTALS, CHARGES, AND FEES 31
Section 7.01	Rentals, Charges, and Fees 31
Section 7.02	Accounting Records..... 31
Section 7.03	Coordination Procedures--Budget Review and Calculation of Rentals, Charges, and Fees 31
Section 7.04	Calculation of Terminal Building Rental Rates 32
Section 7.05	Calculation of Landing Fee Rates 33
Section 7.06	Extraordinary Rate Adjustments 34
Section 7.07	Settlement..... 35
ARTICLE 8	BOND ORDINANCE 35
Section 8.01	Subordination to Bond Ordinance..... 35
Section 8.02	Creation of and Flow of Funds..... 35
Section 8.03	Initial Deposits into Maintenance and Operating Reserve Account and Renewal and Replacement Reserve Account..... 37
ARTICLE 9	MAINTENANCE AND OPERATION OF AIRPORT 37
Section 9.01	Designation of Operation and Maintenance Responsibilities 37
Section 9.02	City's Responsibilities 37
Section 9.03	Airline's Responsibilities 38
Section 9.04	City's Right of Entry 38
Section 9.05	Alterations and Improvements 39
Section 9.06	Environmental Regulations 39
ARTICLE 10	DAMAGE OR DESTRUCTION OF PREMISES 41
Section 10.01	Damage or Destruction 41
Section 10.02	Damage Caused by Airline 42

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 11 INSURANCE AND INDEMNIFICATION	42
Section 11.01 Insurance	42
Section 11.02 Indemnification.....	44
Section 11.03 Non-Liability of City	46
Section 11.04 Release of Liability Regarding Certain Damages	47
ARTICLE 12 ASSIGNMENT OR SUBLEASE	47
Section 12.01 General	47
Section 12.02 Bankruptcy.....	47
Section 12.03 Relinquishment of Space	48
Section 12.04 Consent	48
Section 12.05 Corporate Reorganization.....	48
ARTICLE 13 DEFAULTS	48
Section 13.01 Default	48
ARTICLE 14 TERMINATION	49
Section 14.01 Events Permitting Termination by Airline	49
Section 14.02 Conditions of Premises at Termination	49
Section 14.03 Events Permitting Termination by City	49
ARTICLE 15 GENERAL PROVISIONS	51
Section 15.01 Rules and Regulations.....	51
Section 15.02 Compliance with Law	51
Section 15.03 Nondiscrimination	52
Section 15.04 Affirmative Action	53
Section 15.05 Notices.....	53
Section 15.06 Subordination to Agreements with U.S. Government	53
Section 15.07 Nonwaiver of Rights.....	54
Section 15.08 Federal Aviation Act, Section 308.....	54
Section 15.09 Severability	54
Section 15.10 Headings.....	54
Section 15.11 Assignment by City or Other Successor in Interest.....	54
Section 15.12 Redevelopment.....	55
Section 15.13 Removal of Disabled Aircraft	55
Section 15.14 Quiet Enjoyment	55
Section 15.15 Agreement Subject to Covenants in Deed	55
Section 15.16 Force Majeure.....	55
Section 15.17 Entire Agreement.....	56
Section 15.18 Time is of the Essence	56
Section 15.19 Attorney's Fees.....	56
Section 15.20 Agreement Made in Texas.....	56
TABLE OF CONTENTS	
	<u>Page</u>

ARTICLE 15	GENERAL PROVISIONS (Continued)	
Section 15.21	Cumulative Rights and Remedies.....	56
Section 15.22	Interpretation.....	56
Section 15.23	Agreement Made in Writing	56
Section 15.24	Successors and Assigns.....	57
Section 15.25	Authorization to Enter Lease.....	57
Section 15.26	Compliance with ADA and other Disabled Access Laws	57
Section 15.27	Most Favored Nations.....	57
Section 15.28	Airline Deregulation Act	58
CITY’S SIGNATURE AND ACKNOWLEDGMENT	58
AIRLINE’S SIGNATURE AND ACKNOWLEDGMENT	59

EXHIBITS

Exhibit A	Cost Center Plan
Exhibit B	Terminal Premises
Exhibit C	Rate and Fee Schedule
Exhibit D	Operations, Maintenance, and Service Responsibilities
Exhibit E	Preferentially Assigned Equipment Parking Spaces
Exhibit F	Form of Monthly Activity Report
Exhibit G	Required Federal Provisions

**EL PASO INTERNATIONAL AIRPORT
NON-SIGNATORY AIRLINE OPERATING AGREEMENT**

THIS NON-SIGNATORY AIRLINE OPERATING AGREEMENT(hereinafter referred to as the "Agreement") is entered into this _____ day of _____, 20____, by and between the **CITY OF EL PASO, TEXAS** ("City") and _____], a corporation organized and existing under the laws of the State of (state) ("Airline").

W I T N E S S E T H:

WHEREAS, Chapter 22 of the Texas Transportation Code authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality; and

WHEREAS, Airline is engaged in the business of transportation of persons, property, or mail by air and desires to use certain facilities at the El Paso International Airport ("Airport"); and

WHEREAS, the City has entered into the Signatory Airline Use and Lease Agreement dated _____, 20__ with certain Air Transportation Companies operating at the Airport ("Signatory Airline Use and Lease Agreement", through which agreement the City will set airline rates and charges as outlined therein;

WHEREAS, Airline wishes to operate at the Airport without entering into the Signatory Airline Use and Lease Agreement;

WHEREAS, in furtherance of its authority, City desires to permit Airline to use certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement, and consistent with the terms of the Signatory Airline Use and Lease Agreement as applicable; and

WHEREAS, the City and Airline have the power and authority to enter into this Agreement;

NOW, THEREFORE, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

SECTION 1.01 DEFINITIONS

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

“Agreement” means this Non-Signatory Airline Operating Agreement between City and Airline, as the same may be amended, modified, or altered from time to time pursuant to the terms hereof.

“Air Transportation Business” means that business operated by Airline or another Air Transportation Company at the Airport for the commercial transportation by air of persons, property, mail, parcels, and/or cargo.

“Air Transportation Company” means the legal entity engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, parcels, and/or cargo.

“Aircraft Arrival” means any aircraft arrival at the Airport, including, without limitation, scheduled, non-scheduled, diverted, training, testing, charter, or any other flight operated by an Air Transportation Company. Aircraft Arrivals exclude flights, which are forced to return and land at the Airport because of meteorological conditions, mechanical or operating causes, or emergency or precautionary reasons.

“Airline” means the Air Transportation Company executing this Agreement.

“Airline Equipment or Improvement” means any item of equipment or any improvement to Airline’s Premises provided or installed at request by Airline.

“Airport” means the identified areas “Airfield”, “Terminal Building”, “Air Cargo”, “Aviation” and “Ground Transportation” at the El Paso International Airport: as shown in Exhibit A, Cost Center Map, attached hereto and made a part hereof, as it may be modified or developed from time to time, including all real property easements or any other interest within the identified areas therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City.

“Airport Revenue Bonds” means any bonds issued by City for Airport purposes secured by a pledge of the revenues of the Airport except for any Special Facilities Revenue Bonds.

“Airline Terminal Support System” means any system or service supporting Airline operations in the Terminal Building, including but not limited to,

telecommunications, security, access control, paging, flight or baggage information display or similar systems or services.

“Bond Ordinance” means any ordinance of City regulating or authorizing the issuance of bonds, other than Special Facilities Revenue Bonds, for Airport purposes, or payable from Airport revenues, as the same may from time to time be adopted, amended, or supplemented.

“Bonds” means Airport Revenue Bonds or any other similar or substitute financing instruments issued for Airport purposes under and pursuant to authorizing legislation.

“Capital Improvement Program” means the Airport’s program of Capital Improvements as such program may be amended from time to time at City’s sole discretion.

“City” means the City of El Paso, a municipal corporation organized under the laws of the State of Texas and its officers, directors, agents, and employees.

“Department” means the Department of Aviation of the City.

“Deplaned Passenger” means any passenger disembarking an aircraft at the Airport and entering the Terminal Building including International Arrivals Area.

“Director” means the Director of Aviation of the Department of Aviation or other person properly authorized to act on behalf of Director.

“Enplaned Passengers” means all local, interline transfer, and intraline transfer passengers boarding flights of Airline including revenue and non-revenue passengers but excluding Airline employees.

“Environmental Laws” means all present or future local, state or federal statutes, ordinances, rules, regulations, permits, citations, orders, directives, or consent decrees or other enforceable requirement of any federal, state or local entity, agency or body, or subdivision thereof (including specifically but without limitation, the City of El Paso), having governmental authority, relating to:

- (1) the protection of health, safety and the indoor or outdoor environment;
- (2) the conservation, management or use of natural resources and wildlife;
- (3) the protection or use of surface water and ground water;
- (4) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release or

threatened release, abatement, removal, remediation or handling of, or exposure to any Hazardous Materials (as defined below); or

- (5) pollution (including any release or threatened release discharge or emission to air, land, surface water, or ground water);

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §18091 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Clean Water Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act (U.S.C. §300f-§300j-11 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Occupational Safety and Health Act, the Clean Air Act, 42 U.S.C. Section 7401 et seq. and any state counterpart, each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Materials, or special wastes or by the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The reference to Hazardous Materials in the immediately preceding sentence shall not limit the application of this paragraph to laws dealing with Hazardous Materials, it being the intention of the parties that all environmental laws dealing with activities having an impact on the environment be included within the scope of this paragraph.

“FAA” means the Federal Aviation Administration of the U.S. Department of Transportation or any federal agency(s) succeeding to its jurisdiction.

“Fiscal Year” means City’s fiscal year, which is the twelve-month period commencing September 1 and extending to August 31 of the following year, or such other twelve-month period as may be adopted for the operation of City or Airport.

“Hazardous Materials” means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the U. S. Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) or as extremely hazardous substances under 40 CFR Part 355 and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable Environmental Laws.

“International Arrivals Area” means that area in the Terminal Building at the Airport designated for federal inspection services (FIS).

“Joint Use Premises” means those Terminal Building areas which may be assigned to two or more Air Transportation Companies including on a common use or shared basis, along with all facilities, improvements, equipment, and services which are, or hereafter may be, provided for such use, as shown on Exhibit B, attached hereto.

“Premises” means any areas on the Airport assigned by City to Airline, whether on a Joint, common, Shared, non-preferential or temporary use basis, as depicted on Exhibit B as attached hereto and made a part hereof.

“Maximum Gross Landed Weight” means the maximum allowable landing weight of each aircraft operated by Airline at the Airport as authorized by the FAA and recited in Airline’s flight manual governing that aircraft.

“Passenger Facility Charge” or “PFC” means the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statutes and regulations currently exist or as they may be amended, modified, or supplemented during the Term of this Agreement.

“Renewal and Replacement Reserve” means that reserve defined in the Bond Ordinance for the purposes of funding renewal and replacement expenditures of the City for the Airport.

“Rules and Regulations” means those rules, regulations, policies, and procedures that have been established by City or the Department for the orderly and efficient use of the Airport by airlines and other tenants and users as the same may be amended, modified, or supplemented from time to time. Such Rules and Regulations shall be made available by City to Airline upon request of Airline.

“Shared Use Premises” means those portions of the Terminal Building shared by Airline with other Air Transportation Companies, as shown on Exhibit B, attached hereto.

“Signatory Airline” means each Air Transportation Company that has entered into a Signatory Airline Use and Lease Agreement with the City effective _____, 20__ or later and expiring _____, 20__.

“Special Facilities” means capital improvements or facilities located on any property owned or leased by City and located at Airport, which are financed by the issuance of Special Facilities Revenue Bonds.

“Special Facilities Revenue Bonds” means any debt of City which is permitted by, but not issued pursuant to, the terms of the Bond Ordinance and which is secured by and payable solely from rentals or other charges derived by City under a lease, sale or other agreement (or any document securing the same)

between City and the person, firm or corporation utilizing the Special Facilities financed thereby.

“Term” means the period of time during which Airline’s activities at the Airport are governed by this Agreement. Said Term shall begin on the Effective Date, and, except as otherwise set forth herein, terminate on the date set forth in Article 2.

“Title 14” means that portion of the El Paso City Code addressing aircraft and airports, as the same may be amended, modified, or supplemented from time to time.

“Total Airline Landed Weight” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of Airline over a stated period of time.

“TSA” means the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

Additional words and phrases used in this Agreement but not defined either in this Article 1 or elsewhere herein shall have the meanings as defined in the Signatory Airline Use and Lease Agreement, or, if not defined therein either, under the Bond Ordinance or, if not so set forth, shall have their usual and customary meaning.

SECTION 1.02 CROSS-REFERENCES

References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

ARTICLE 2 - TERM

SECTION 2.01 TERM

This Agreement shall commence on _____, 20__ (“Effective Date”) and terminate at midnight on the earlier of: (1) termination by either party with or without cause pursuant to Article 14; (2) the date upon which Airline becomes a Signatory Airline; or (3) the date upon which the Signatory Airline Use and Lease Agreement expires or is earlier terminated for all Signatory Airlines (“Term”).

SECTION 2.02 TERMINATION OF EXISTING AGREEMENTS

Any Terminal Building leases and operating agreements heretofore executed between the parties covering or pertaining to the Airport are canceled and terminated as of the Effective Date of this Agreement, provided that such cancellation and termination shall not be construed as a waiver, relinquishment, or release of any claims, damages, liability, rights of action, or causes of action that either of the parties hereto may have

against the other under such existing leases and agreements and that have accrued before the Effective Date of this Agreement.

SECTION 2.03 [RESERVED]

SECTION 2.04 EXTENSION

In the event Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for one (1) additional two-year renewal period, through the mutual written agreement of Airline and City. To extend the term of this Agreement, the Director shall give written notice to Airline of City's intent to extend the Agreement no less than three (3) months prior to the expiration of the term of the Agreement. If Airline is not willing to renew for the extension period, Airline will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent within thirty (30) days from the notification of the City's intent to extend the term. During any extension period, the Agreement shall be extended on the same terms and conditions, except Airline shall pay all rates, charges and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution.

ARTICLE 3 - RIGHTS AND SPECIFIC PRIVILEGES

SECTION 3.01 USE OF THE AIRPORT

Airline, its employees, passengers, guests, patrons, agents, independent contractors and invitees shall have the right to use, in common or jointly with other duly authorized users, those portions of the Airport, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their common or joint use, subject to the provisions of this Agreement and the Rules and Regulations.

SECTION 3.02 SPECIFIC RIGHTS OF AIRLINE AT THE AIRPORT

Airline shall have the right, subject to conditions contained herein and in addition to all rights elsewhere granted in this Agreement, to use the Airport for the following purposes, subject to the provisions of this Agreement and the Rules and Regulations:

- A. The operation of an Air Transportation Business, including all activities reasonably necessary to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, or testing of aircraft or other equipment of or operated by Airline, subject to the availability of space, and subject to such reasonable charges, regulations, and/or restrictions City may establish; provided however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan

(ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.

- C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.
- D. The training of persons and testing of aircraft and other equipment at the Airport, such training and testing to be limited to that incidental to Airline's Air Transportation Business, and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. Flight training and aircraft testing shall be undertaken by Airline only to the extent permitted by and subject to the Rules and Regulations and in only those areas designated by Director. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.
- E. The purchase of Airline's requirements of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's Air Transportation Business. Nothing herein shall restrict City from levying nondiscriminatory concession or privilege fees or charges on any person or company conducting business at the Airport other than an Air Transportation Business and provided further that the City may require a third-party service provider or operator contracting with Airline to execute a written agreement with the City.
- F. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies to other Air Transportation Companies subject to City's right to charge and collect fees or commissions for such sales or exchanges as provided in Section 3.04 (H). Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only those functions that are incidental to the operation of its Air Transportation Business.
- G. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, at aircraft parking positions designated by Director subject to the Rules and Regulations. Director reserves the right, at any time, to designate other locations reasonably accessible from the Terminal Building for the performance of aircraft maintenance and service activities if Director believes that such activities

would interfere with aircraft operations of other Air Transportation Companies at the Terminal Building.

- H. The installation and operation of identifying signs and graphics on Airline's Premises, subject to the prior written approval of Director, provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other Air Transportation Companies; (2) consistent with Department's graphics standards as established from time to time by Director; (3) in compliance with the Rules and Regulations; and (4) in compliance with City Code and all local laws and ordinances. However, Airline shall not install any promotional displays or advertising displays in its Premises unless authorized in writing, in advance, by Director.
- I. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the Terminal Building, as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation and type of equipment shall require the prior written approval of Director and shall conform with all applicable federal, state, and local requirements. Airline is required to use the City's Multi-user Flight Information Display System (MUFIDS) and agrees to abide by the rules established by City for its use. Airline may use its own Flight Information Display System (FIDS) in its Premises subject to the prior written consent of Director and subject to such reasonable conditions as Director may require.
- J. The provision of baggage porter, skycap, or curbside airline baggage check-in services. Airline may arrange with other Air Transportation Companies to provide such services or may provide such services on its own behalf.
- K. The use of the International Arrivals Area, depicted on Exhibit B, in common with other authorized users, subject to availability and payment of then current use charges.
- L. The right to erect, maintain, and station security screening devices and to conduct a security check operation of passengers, baggage, and packages in the Airline's Joint Use Space at a location approved by Director in his or her reasonable discretion.
- M. The right, in common with other Air Transportation Companies, to the use of City's lifting device, as required by 14 CFR Part 382, and any amendments thereto, and permits the use of that equipment in the course of the Airline's operations, including the performance of passenger

handling/boarding services for other Air Transportation Companies at the Airport.

All rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to the Agreement are reserved for and to City.

SECTION 3.03 EMPLOYEE PARKING FACILITIES

Airline's employees working at the Terminal Building will be provided vehicular parking facilities, if available, in common with other employees. Such facilities shall be located in an area designated by Director. City reserves the right to assess a reasonable charge to Airline or its employees for such parking facilities.

SECTION 3.04 LIMITATIONS ON USE BY AIRLINE

In connection with the exercise of its rights under this Agreement, Airline:

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the use, operation, or maintenance of the Airport, including but not limited to effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.
- B. Shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from Director to do so.
- C. Shall not dispose of or permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials, unless such waste material or products first be properly treated by equipment installed with the approval of City and any other administrative body having appropriate jurisdiction.

- D. Shall not keep or store any Hazardous Materials such as flammable liquids and solids, corrosive liquids, compressed gases, or magnetized or radioactive materials on the Airport except when all the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any liquids having a flash point of less than one hundred degrees (100°) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said materials shall be under the control and care of designated and properly qualified Airline personnel; (3) said materials shall be packaged, handled and stored in compliance with applicable U.S. Department of Transportation, Environmental Protection Agency, and other applicable regulations for transport, pre-transport and storage of hazardous articles and materials, including the Airport's Spill Prevention, Control, and Countermeasure (SPCC) Plan; and (4) said materials shall be only stored in such storage areas as are designated. Director reserves the right to require Airline to relocate any stored hazardous material necessary.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport without prior written approval of City. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and City.
- F. Shall not maintain or operate in the Terminal Building or elsewhere at the Airport, a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public, its employees, or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Airline may dispense food and beverages on board Airline's aircraft or to passengers boarding Airline's aircraft for consumption on board and provide vending machines solely for the sale of hot and cold beverages, food, and confections to Airline employees in areas not accessible to the general public. However, in the event of originating flight delays greater than one hour, or for diverted flights or originating flights that have returned to the Airport, Airline may provide water and typical onboard snacks (e.g., peanuts, pretzels, etc.) at no charge to Airline's passengers in the holdroom area.
- G. Agrees to comply with all security measures required of Airline or City by the FAA or contained in City's FAA-approved Master Security Plan for the Airport, as such plan may be amended from time to time. Any fines and/or penalties levied against City for security violations at the Airport resulting from any non-compliance of Airline, its employees, officers, agents, affiliates, or suppliers while under its control, shall be immediately due and payable to City by Airline.

- H. May exercise the rights and privileges granted Airline under this Agreement with respect to the performance of ground services and activities in connection with its Air Transportation Business at the Airport, by Airline for and on behalf of Airline's regularly scheduled or unscheduled services Airline may, subject to the prior written approval of Director, and, where applicable, the payment of fees or commissions as provided for in this Agreement, perform ground services for any other Air Transportation Company using the Airport provided that Airline shall be solely responsible for the reporting to City of all such Air Transportation Company's landings, landed weights, and passengers and for the payment of all fees and amounts payable excluding PFCs, by or on account of such Air Transportation Company to City under this Agreement or under Title 14 unless such Air Transportation Company is a Signatory Airline. It is understood and agreed that City reserves the right to control access to restricted areas and to collect reasonable fees or commissions for the provision of in-flight catering, vending, ground transportation, ground support, or other services by Airline for any Air Transportation Company other than Airline and for any services or facilities provided by or for Airline in competition with concessionaires and operators operating under an agreement with City.
- I. Shall park ground service or other equipment on the Terminal Building aircraft apron only at areas designated on Exhibit E or otherwise designated by Director.
- J. Shall not install any coin-operated or card operated machine(s) or device(s), except for: (1) machines for the sale of Airline's tickets or issuance of boarding passes located on Airline's Premises or other areas approved in writing by Director; or (2) beverage or snack machines as provided in Section 3.04 (F) above.

SECTION 3.05 AIRPORT USE SUMMARY

Airline shall file with Director an Airport Use Summary, in a form acceptable to Director, providing the information specified below and such other non-commercially sensitive information as Director may reasonably request regarding Airline's operation at the Airport. Airline shall, at all times, maintain a current version of such Airport Use Summary on file with Director. The Airport Use Summary shall include the following information:

- Names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.
- The current and proposed schedules of Airline's flight activity at the Airport. Airline shall notify Director of schedule changes or the addition or deletion of flights at the Airport prior to or no later than the public announcement thereof.

- The description of Airline's fleet and identification of the type of Airline's aircraft that are serving or will serve the Airport. Airline shall provide notice of the introduction of any aircraft that is not being operated by Airline at the Airport as of the date of this Agreement.

Such Airport Use Summary shall be updated and re-filed with Director whenever there is a change to the nature of Airline's operations at the Airport or whenever Director shall reasonably request the same.

ARTICLE 4 - PREMISES

SECTION 4.01 PREMISES

A. Categories of Space.

Airline may be assigned areas in or adjacent to the Terminal Building on a Joint Use or Shared Use (or combination thereof) as follows and as more particularly delineated on Exhibit B, as such exhibit may be modified. Non-Signatory Airlines will not be assigned space on a preferential or exclusive basis under this Agreement.

B. Space in Terminal Building.

At the Effective Date of this Agreement, Airline shall use the areas in or adjacent to the Terminal Building shown on Exhibit B. Airline's Premises in the Terminal Building shall be subject to change from time to time by Director, after consultation with Airline. Any such changes shall be incorporated herein by Director transmitting to Airline a replacement Exhibit B.

C. [RESERVED]

D. The dimensions on Exhibit B, as such exhibit may be modified in accordance with this Agreement, shall be the basis for determining the amount of the rentals payable pursuant to Articles 6 and 7. Director shall issue new Exhibit B after any Terminal Building expansion or modification.

SECTION 4.02 EQUIPMENT AND AIRCRAFT PARKING AREAS AND HOLDROOMS

A. Aircraft Parking Areas, including associated aircraft loading positions, apron areas and loading bridges ("gates") as shown on Exhibit "B-2" as such exhibit may be amended from time to time by Director, and associated Joint Use Space in the Terminal Building ("holdrooms") shall be assigned to Airline by Director on a common use, nonexclusive use basis.

B. [RESERVED]

- C. Airline shall park all its ground service equipment in its assigned Equipment Parking Area as set forth on Exhibit B or such other area designated by the Director. In the event Airline requires additional equipment parking, such parking shall be subject to availability, the written approval of Director, and applicable Rules and Regulations.
- D. [RESERVED]
- E. [RESERVED]
- F. Airline shall comply with any directive of the City to temporarily accommodate other Air Transportation companies at its assigned aircraft parking positions or other assigned space from time to time, as deemed necessary by Director for situations including, but not limited to, unscheduled flights (including charters), mechanical problems, and diversions due to weather.

SECTION 4.03 [RESERVED]

SECTION 4.04 USE OF CITY LOADING BRIDGES

- A. Any loading bridges owned and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned loading bridges by Airline shall be subject to the following terms and conditions:
 - 1. The loading bridges shall be operated only by employees, contractors, or agents of Airline, who are approved and qualified by Airline to operate the loading bridges.
 - 2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the loading bridges by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
 - 3. Airline shall be solely responsible for the costs to replace or repair any damage to loading bridges or other property caused by the operation of the loading bridges by its employees, contractors, or agents.

4. City, during the Term of this Agreement, shall reasonably maintain and keep in good repair the City-owned loading bridges referred to herein.
5. Airline shall pay the loading bridge charge as provided in Exhibit C.

SECTION 4.05 USE OF CITY LIFTING DEVICE

- A. Any lifting device owned and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned lifting devices by Airline shall be subject to the following terms and conditions:
 1. The lifting devices shall be operated only by employees, contractors, or agents of Airline who are approved and qualified by Airline to operate the lifting devices.
 2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the lifting devices by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
 3. Airline shall be solely responsible for the costs to replace or repair any damage to lifting devices or other property caused by the operation of the lifting devices by its employees, contractors, or agents.
 4. City, during the Term of this Agreement, shall reasonably maintain and keep in good repair the City-owned lifting devices referred to herein.

SECTION 4.06 [RESERVED]

SECTION 4.07 REASSIGNMENT OF SPACE DURING CONSTRUCTION

Director may temporarily reassign any Premises or Aircraft Parking Area during any construction after ninety (90) days' written notice is provided to Airline. The cost for any temporary relocation resulting from construction shall, at the discretion of City, be either borne by the airline necessitating the relocation or shall be included as part of the City's project cost. During the period when Airline is temporarily relocated, appropriate adjustments to rentals shall be made to reflect any differences between the area of the Premises and the area of temporarily assigned premises.

SECTION 4.08 CONDITION OF PREMISES; AIRLINE REMOVAL OF PERSONAL PROPERTY

- A. Airline covenants and agrees that on expiration of the term of this Agreement, or on earlier termination as hereinafter provided, or on reassignment of the Premises as heretofore provided, it will vacate the Premises hereunder in good condition, reasonable wear and tear excepted.
- B. Airline shall, on expiration or early termination and no later than thirty (30) calendar days thereafter, at its expense, remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees.
- C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the property on which it is located, and title thereto shall thereupon vest in City. Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of any remaining Airline property after such thirty (30) day period.

SECTION 4.09 ACCESS

- A. Subject to the provisions herein, Title 14, the Rules and Regulations, and such other restrictions as City may impose with respect to Airline's use of Premises, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Premises and to public areas and public facilities of the Terminal Building.
- B. The ingress and egress provided for in Section 4.09(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized in advance and in writing by Director.
- C. City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Agreement.
- D. Airline agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, or independent contractors must be authorized by the City to

enter restricted areas as defined in Title 14. Airline agrees that no person authorized to enter a restricted area by virtue of this Agreement shall permit any person who is not otherwise authorized to enter a restricted area unless such unauthorized person is, at all times while in the restricted area, in the company of an authorized person.

- E. Airline understands and agrees that, in the event the Federal Aviation Administration assesses a civil penalty against the City or Department for any violation of 49 CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Airline, its tenants, subtenants, patrons, agents, servants, employees, invitees, or independent contractors, Airline shall, upon demand of City, immediately reimburse the City in the amount of the civil penalty assessed.
- F. The City may promulgate Rules and Regulations from time to time in order to effectuate the provisions of this Article 4, including without limitation provisions related to gate use and assignment, accommodation, and prioritization of common use facilities.

ARTICLE 5 – [RESERVED]

ARTICLE 6 - REPORTS, RENTALS, CHARGES, AND FEES

SECTION 6.01 GENERAL

- A. Airline shall pay to City rentals, fees, and charges as calculated in accordance with Articles 6 and 7 of the Signatory Airline Use and Lease Agreement. In consideration for use of the Premises and for the various rights, licenses, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City, during the Term of this Agreement, without deduction or set-off, rentals, charges, and fees to be calculated as set forth herein. City shall invoice Airline monthly for all such rentals, charges, and fees except landing fees, which shall be payable by Airline without invoice. Payment shall be made by Airline in accordance with Section 6.11 hereof.

SECTION 6.02 MONTHLY ACTIVITY REPORT

- A. Airline shall furnish to Director, on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals, fees, and charges due under this Agreement in the form attached hereto as Exhibit F, or on such standard forms of the City or other forms approved or prescribed by the Director. Said report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for

the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month to include any non-scheduled and charter operations; (2) the total number of Enplaned Passengers and Deplaned Passengers to include any non-scheduled and charter operations; (3) the number of Enplaned Passengers who are originating their air journeys at the Airport (rather than transferring from other flights of Airline or other Air Transportation Companies at the Airport); (4) the number of Enplaned Passengers who are non-revenue passengers or frequent flier award coupon passengers as such terms are defined in 14 CFR Part 158, as amended; (5) the total number of Aircraft Arrivals and departures from non-preferentially assigned gates or City-owned loading bridges; (6) the number of arriving international passengers using the International Arrivals Area; (7) the weight of cargo, freight, mail, and express for such month; and (8) any other data needed to establish and assess rates and charges. Airline shall also report the activities set forth herein for any other Air Transportation Company or charter, which is handled by or uses the Premises of Airline.

- B. If Airline fails to furnish Director with the report required by Section 6.02(A), it shall be considered in default under this Agreement and Airline's rentals, fees, and charges, as provided for hereafter, shall be determined by assuming that Airline's Total Airline Landed Weight and Enplaned Passengers for such month was one hundred fifty percent (150%) of its Total Airline Landed Weight and Enplaned Passengers during the most recent month for which such data are available for Airline and by applying the rates specified herein and the applicable City Annual Budget Resolution. Any necessary adjustment in such rentals, fees, and charges shall be calculated after an accurate report is delivered to Director by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the succeeding month.

SECTION 6.03 [RESERVED]

SECTION 6.04 ELECTRICITY CHARGES FOR EXTRAORDINARY USAGE

Airline shall pay City charges for the extraordinary usage of electrical power in its Shared Use and Exclusive Use space and preferentially assigned gates based on the cost, without mark-up, to City for such extraordinary usage of electricity by Airline as arrived at through separate metering or computation by City. Airline shall report to Director any plans to decrease or increase its extraordinary usage of electrical equipment or electricity.

SECTION 6.05 LANDING FEES

Airline shall pay to City monthly Landing Fees to be determined by multiplying the number of one thousand (1,000) pound units of Total Airline Landed Weight for Airline during the month by the then-current Landing Fee Rate as calculated in Exhibit C.

SECTION 6.06 EQUIPMENT PARKING RENTALS

Airline shall pay City, for its assigned Equipment Parking Area, an annual rental computed in Exhibit C.

SECTION 6.07 SECURITY SCREENING FEE

Airline shall pay City amounts sufficient to reimburse City for its share of City's actual cost of providing armed law enforcement support for the security screening operation as required by 49 CFR Part 1542. The cost of such support shall be apportioned by City among Air Transportation Companies using the secured passenger boarding areas on the basis of the share of each Air Transportation Companies' Enplaned Passengers relative to the total Enplaned Passengers of all such Air Transportation Companies as calculated in Exhibit C.

SECTION 6.08 AIRLINE EQUIPMENT OR IMPROVEMENT CHARGES

Upon the installation or provision by City of any Airline Equipment or Improvement, Airline shall pay for the use of such equipment or improvement amounts sufficient to amortize the cost paid by City, including applicable maintenance and operating expenses, all as determined by City, as illustrated on Exhibit C attached hereto and made a part hereof.

SECTION 6.09 INTERNATIONAL ARRIVALS AREA CHARGES

Airlines shall pay amounts for the use of the common-use International Arrivals Area as stipulated in Exhibit C.

SECTION 6.10 CITY-OWNED LOADING BRIDGE CHARGE

Airline shall pay City a loading bridge charge on a monthly basis for the use of City-owned loading bridges preferentially assigned to Airline at a rate determined by City for the extraordinary costs of operation and maintenance required to support the operation of such loading bridges and the rate shall be set with the intent to recover such extraordinary costs over the course of a fiscal year or longer if the nature of such extraordinary costs would warrant doing so under standard accounting principles. Director may revise such loading bridge charge rate at the beginning of each Fiscal Year with prior written notice to Airline.

SECTION 6.11 PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS

- A. All Exclusive Use and Shared Use Rentals, Apron Use Fees, Equipment Parking Rentals, Airline Equipment Charges and any City-owned loading bridge charges on preferentially assigned gates shall be due and payable the first day of each month, in advance, without invoice.

- B. Landing Fees shall be due and payable on or before the twentieth (20th) day of each month, without invoice.
- C. All Joint Use, Security Screening Fees, and other fees and charges shall be due and payable on invoice within thirty (30) days of the date of invoice.
- D. The acceptance by City of any payment made by Airline shall not preclude City from identifying the accuracy of computations in Airline's Monthly Activity Report, submitted to Director as provided in Section 6.02, or from recovering any additional payment actually due from Airline.
- E. If any payment is not received by City by the due date, City may, at its discretion, charge Airline interest at the highest rate permitted by law. All payments due and payable herein shall be paid in lawful money of the United States of America, without set-off, electronically by Automated Clearing House (ACH), or by check made payable to City and delivered or wired, as applicable, to the following address or account, or to such other address or account as City may notify Airline in writing from time to time:

Via Mail
Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79925-1278

SECTION 6.12 TAXES AND OTHER CHARGES

Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Airline or City, with respect to the Premises, Airline's use and/or occupancy of the Premises, or any improvements thereon, during the term of this Agreement including any extensions or option periods granted thereto.

Airline in good faith may contest any tax or governmental charge; provided that Airline may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the City, such action will not adversely affect any right or interest of the City.

SECTION 6.13 PASSENGER FACILITY CHARGE

- A. City reserves the right to assess and collect PFC's subject to the terms and conditions set forth in 49 U.S.C. § 40117 (the "PFC Act") and the rules and regulations thereunder, 14 C.F.R. Part 158 (the "PFC Regulations"), as may be supplemented or amended from time to time. Airline shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part

158. Failure by Airline to remit PFC's within the time frame required by 14 CFR Part 158 shall be deemed an event of default pursuant to Section 13.01.

- B. If Airline transports passengers from the Airport on Airline's aircraft chartered by a charter Air Transportation Company or tour operator issuing passenger tickets other than Airline's, Airline will provide the City with a schedule detailing the date and time of the flight and the number of Enplaned Passengers. Excepting only passengers on flight chartered by an Air Transportation Company or tour operator not required to collect a PFC under the Airport's applicable record of decision, Airline agrees to pay the required PFC amount due the City in a timely manner and to seek reimbursement from the charter Air Transportation Company or tour operator with no liability to the City.
- C. Airline shall hold the net principal amount of all PFCs that are collected by Airline or its agents on behalf of the City pursuant to the PFC Act and the PFC Regulations in trust for the City. For purposes of this Section, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of the City, reduced by all amounts that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations (such net principal amount known as "PFC Revenue"). Airline acknowledges that all PFC Revenue collected for the City neither belongs to nor is owned by Airline except to the extent set forth in applicable Federal law and, unless the status of PFC Revenue in the possession of Airline is characterized in a separate manner under FAA regulations (in which case such characterization shall prevail), that such PFC Revenue is held in trust by Airline for the exclusive use and benefit of the City. Airline shall not make any claim in any document or proceeding that, for PFC Revenue collected by Airline on behalf of the City, the Airline has any legal or equitable interest in such PFC Revenue, except to the extent Airline is specifically granted such interest by Federal statute or regulation, including the right of reimbursement from such PFC funds for the Airline's costs of collection.
- D. Any late payment of the PFC may be subject to late fees computed at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate permitted by Applicable Law, from the due date until paid, to the extent allowed by Applicable Law.
- E. Airline acknowledges that the City has given to the United States of America, acting by and through the FAA, certain assurances under the PFC Act and the PFC Regulations, including Appendix A thereto (the "PFC Assurances"), and Airline agrees that this Agreement shall be subordinate and subject to all PFC Assurances. In the event the FAA requires any modification of this Agreement as a condition precedent to the City's

collection of PFCs or as a means to effect the City's compliance with the PFC Act, the PFC Regulations, or the PFC Assurances, Airline shall not withhold its consent to any modification of this Agreement as may reasonably be required for the City to collect PFCs or to comply with the PFC Act, PFC Regulations, and/or PFC Assurances.

SECTION 6.14 RECORDS OF AIRLINE

Airline shall keep and maintain a complete and adequate set of records of all landing weights and other information specified in Section 6.02 hereof or otherwise required for the calculation or payment of fees required under this Agreement for the current Fiscal Year and the three (3) immediately preceding Fiscal Years, and shall make such records available for inspection by Director at any and all reasonable hours and times.

SECTION 6.15 OTHER FEES AND CHARGES

City expressly reserves the right to assess and collect (1) reasonable and nondiscriminatory fees for concessions and other services provided by Airline for others if such services provided by Airline would otherwise be available from a concessionaire or licensee of City; (2) reasonable and nondiscriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by City and accepted by Airline, including, but not limited to, FIS facility fees, special maintenance of airline Premises, equipment vehicle storage, disposal fees, utility fees, remote ramp aircraft parking fees, and gate usage per turn fees; and (3) reasonable and nondiscriminatory fee for any employee parking area(s) provided at the Airport.

Anything in this Agreement to the contrary notwithstanding, this Section 6.15 shall not be interpreted or understood as contracting away the City's governmental authority and shall not be construed to waive any lawfully assessed taxes or any governmental charges.

SECTION 6.16 RIGHT OF SET OFF

City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). Past due amounts may include sums due under prior agreements, this Agreement, or for other usage of the Airport as a non-signatory airline. In the event City exercises the right of set off it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

SECTION 6.17 SECURITY DEPOSIT

Airline agrees to pay a security deposit to City subject to the following conditions:

A. Unless Airline has provided regularly scheduled weekday passenger or

cargo flights to and from the Airport for the eighteen (18) months prior to Airline's execution of this Agreement without committing an act or omission that would have been an Event of Default under Section 13.01 of this Agreement, City shall have the right to require Airline to provide to City Security Deposit in an amount equal to three (3) months estimated fees and charges payable by Airline under Article 6 of this Agreement, to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all fees and charges due hereunder. Airline shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months (including any period prior to Airline's execution of this Agreement or prior to the assignment of this Agreement to Airline during which Airline provided regularly scheduled passenger flights to and from the Airport) during which Airline commits no Event of Default under Section 13.01 of this Agreement (and for any such prior period, no act or omission that would have been such an Event of Default hereunder). City shall provide Airline with written notice that Airline must provide the Security Deposit required hereunder and Airline shall provide the Security Deposit within ten (10) days of issuance of the notice. Such Security Deposit shall be in such form and as shall be acceptable to City in its reasonable discretion. In the event that any such Security Deposit shall be for a period of less than the full period required by this Agreement, or if such Security Deposit is canceled, Airline shall provide a renewal or replacement Security Deposit for the period following the expiration or cancellation of such Security Deposit previously provided at least sixty (60) days prior to the date on which such previous Security Deposit expires or at least sixty (60) days prior to the effective date of such cancellation. City's rights under this Section 6.17 shall be in addition to all other rights and remedies provided to City under this Agreement.

- B. IF AIRLINE SHALL COMMIT AN EVENT OF DEFAULT UNDER SECTION 13.01 IN THE PAYMENT OF ANY FEES DUE UNDER THIS AGREEMENT, THE DEPARTMENT SHALL HAVE THE RIGHT, BY WRITTEN NOTICE TO AIRLINE GIVEN AT ANY TIME, TO IMPOSE OR REIMPOSE THE REQUIREMENTS OF SECTION 6.17(A) ON AIRLINE. IN SUCH EVENT, AIRLINE SHALL WITHIN TEN (10) DAYS FROM ITS RECEIPT OF SUCH WRITTEN NOTICE, PROVIDE THE DEPARTMENT WITH THE REQUIRED SECURITY DEPOSIT AND SHALL THEREAFTER MAINTAIN SUCH SECURITY DEPOSIT IN EFFECT UNTIL THE EXPIRATION OF A PERIOD OF EIGHTEEN (18) CONSECUTIVE MONTHS DURING WHICH AIRLINE COMMITS NO EVENT OF DEFAULT UNDER SECTION 13.01 OF THIS AGREEMENT. THE DEPARTMENT SHALL HAVE THE RIGHT TO REIMPOSE THE REQUIREMENTS OF SECTION 6.17(A) ON AIRLINE EACH TIME AIRLINE COMMITS SUCH AN EVENT OF DEFAULT DURING THE TERM OF THIS AGREEMENT. THE DEPARTMENT'S RIGHTS UNDER SECTION 6.17(B) SHALL BE IN ADDITION TO ALL OTHER RIGHTS AND REMEDIES PROVIDED TO

THE DEPARTMENT UNDER THIS AGREEMENT.

City will also have the option to charge non-signatory landing fee rates if Airline does not comply with Section 6.17(A) above when required to do so.

SECTION 6.18 [RESERVED]

ARTICLE 7 - CALCULATION OF RENTALS, CHARGES, AND FEES

Airline shall pay to City rentals, fees, and charges as calculated in accordance with Articles 6 and 7 of the Signatory Airline Use and Lease Agreement.

ARTICLE 8 - BOND ORDINANCE

SECTION 8.01 SUBORDINATION TO BOND ORDINANCE

- A. This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by City pursuant to the terms, covenants, and conditions of the Bond Ordinance.
- B. In conflicts between this Agreement and the Bond Ordinance, the Bond Ordinance shall govern except that no change in the method of calculation of rentals and fees payable shall govern to the extent that it materially adversely affects the rights of Airline hereunder.
- C. All definitional terms in this Article 8 that are not specifically defined herein are to have the meanings set forth in the Bond Ordinance.

SECTION 8.02 [RESERVED]

SECTION 8.03 [RESERVED]

ARTICLE 9 - MAINTENANCE AND OPERATION OF AIRPORT

SECTION 9.01 DESIGNATION OF OPERATION AND MAINTENANCE RESPONSIBILITIES.

In addition to the obligations of Airline and City set forth in this Article 9, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

SECTION 9.02 CITY'S RESPONSIBILITIES

- A. City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a manner consistent with airports

of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be Airline's obligation pursuant to Section 9.03 and Exhibit D.

- B. City shall, to the extent it is legally able to do so, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. City shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided in accordance with this Section 9.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by City's negligence or any other cause beyond reasonable control of City.
- D. City shall operate the Airport and shall exercise these rights in accordance with applicable laws and regulations.

SECTION 9.03 AIRLINE'S RESPONSIBILITIES

Subject to the provisions of Section 9.05:

- A. Airline shall, at all times, preserve and keep its Premises in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have janitorial responsibilities designated to be those of City pursuant to Exhibit D.
- B. Airline shall operate and maintain at its own expense any improvements and/or equipment installed by Airline for the exclusive use of Airline, except for infrastructure improvements and equipment and facilities serving the entire Terminal Building.
- C. Airline shall not erect, maintain, or display on its Premises or anywhere in the Terminal Building in the public view any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Director.

SECTION 9.04 NO DENIAL OF CITY ACCESS TO PREMISES

City, by its Director or other authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right at any time to access any Premises assigned on a nonexclusive basis to Airline, including without limitation for the following purposes:

- A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.

- B. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary if Airline fails to perform its obligations under this Agreement, and to recover the actual cost of such maintenance, cleaning, or repair from Airline, plus a fifteen-percent (15%) administrative charge from Airline on the next rent due.
- C. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary and which is the responsibility of City under this Agreement.
- D. For the purpose of exhibiting same to prospective tenants, purchasers or others.

SECTION 9.05 ALTERATIONS AND IMPROVEMENTS

- A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the Premises without the prior written approval of Director.
- B. Plans and specifications for any such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and State and Federal laws and regulations.
- C. All Airline alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon expiration, or early termination, of this Agreement.

SECTION 9.06 ENVIRONMENTAL REGULATIONS

Airline shall comply with the following environmental regulations:

- A. Airline shall not cause or permit any Hazardous Materials, as defined in Section 1.01 herein, to be stored or used on or about the Airport by Airline, its agents, or employees, except in compliance with Environmental Laws as described below and as permitted by City in accordance with this Agreement.
- B. Airline shall, at all times and in all respects in connection with its use and occupancy of the Airport, comply with all present and hereinafter enacted local, state, and federal laws, ordinances, regulations, orders, and any amendments thereto relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials on, about, or from the Airport. Without limiting the foregoing, Airline shall comply with Environmental Laws

(as defined in Section 1.01 herein) at all times in connection with its use and occupancy of the Airport. Airline shall also comply with permits held by City as and to the extent Airline's activities may impact City's ability to comply with such permits including, but not limited to, the Airport stormwater permit issued pursuant to the Clean Water Act, the Municipal Separate Storm Water permit issued pursuant to the Clean Water Act or any reissued version of either permit, whether issued by the US EPA or the Texas Commission on Environmental Quality (TCEQ) or any predecessor agencies. This list of permits is provided by way of example only and is not intended to be fully inclusive. During the term of this Agreement, if City becomes aware of other permits, which are impacted by Airline's activities, it will provide Airline with written notice of those permits. When reasonably possible, City may provide Airline with written notice of any new permits or proposed changes to permits prior to issuance that may reasonably be expected to impact Airline's costs or operations in order to provide Airline with a reasonable opportunity to engage in the permitting process.

C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the Airport, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. Airline shall cause any and all Hazardous Materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of this Agreement, Airline shall cause all Hazardous Materials that are Airline's responsibility to be removed from the Airport as required by applicable Environmental Laws and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws. In addition, to the extent such Hazardous Materials are required by Environmental Laws to be remediated, Airline shall do so in compliance with such Environmental Laws provided, however, that Airline shall not take any remedial action in response to the presence of any Hazardous Materials on or about the Airport, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Airport without first notifying City in writing of Airline's intention to do so (except in cases of emergency where such notice is impracticable in which case Airline shall immediately take steps to remediate and notify the City as soon as practicable) and affording City ample opportunity to appear, intervene, or otherwise appropriately assert and protect City's interest with respect thereto.

- D. If at any time Airline shall become aware, or have reasonable cause to believe, that any Hazardous Material has come to be located on or about the Airport in violation or potential violation of Environmental Laws, Airline shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide City with written notice of that condition. In addition, Airline shall immediately notify City in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Airline at the Airport pursuant to any Environmental Laws; (2) any claim made or threatened by any person against Airline or City relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials at the Airport. Airline shall make available for review by City any reports made by Airline to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Airline shall also supply to City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Airport or Airline's use thereof. Airline shall promptly deliver to City copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Airport by or on behalf of Airline except for routine disposals such as used oil or absorbent material, which shall be delivered upon request, unless required to be provided by applicable Environmental Law.

ARTICLE 10 - DAMAGE OR DESTRUCTION OF PREMISES

SECTION 10.01 [RESERVED]

SECTION 10.02 DAMAGE CAUSED BY AIRLINE

In the event that due to the negligence or willful act or omission of Airline, its employees, or its agents, the Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of fees and charges under this Agreement during the repair or replacement of said Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds paid to City by reason of such damage or destruction (whether paid by by Airline's insurer (which shall be the primary insurance) or by the City's insurer (which shall be the secondary insurance)), Airline shall pay the amount of such additional costs to City.

ARTICLE 11 - INSURANCE AND INDEMNIFICATION

SECTION 11.01 INSURANCE

- A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits and coverage types as hereinafter stated, insuring against the liabilities set forth in this Section.
- B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and motor vehicle liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance companies shall be qualified to do business and be in good standing in Texas. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.
- C. Airline shall cause a certificate of insurance to be furnished to City within thirty (30) days from the effective date of this Agreement, evidencing such insurance coverage. A certificate of insurance shall be delivered to City at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Airline shall provide, at City's request, a copy of the endorsement page or declaration page in lieu of the certificate. Each such certificate of insurance shall contain:
 - 1. A statement of the coverage provided by the policy;
 - 2. A statement certifying the City and its officers, directors, agents, and employees are listed as an additional insured in the policy;
 - 3. A statement of the period during which the policy is in effect;
 - 4. An agreement by the insurance company issuing such policy that the policy shall not be cancelled or any of the provisions changed for any reason whatsoever without at least thirty (30) days' prior written notice to City.
- D. If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the reestablishment of the insurance of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline and permit City to terminate this Agreement pursuant to Section 14.03.
- A. Airline, at its own expense, shall procure and maintain for the benefit of City and itself, as their respective interests shall appear, liability insurance with

insurance underwriters, satisfactory to City and with the following minimum limits:

- i. Aircraft liability insurance and aviation general liability insurance, covering bodily injury, personal injury, property damage, products/completed operations liability, premise liability, and contractual liability, with a liability limit of not less than Two Hundred Fifty Million Dollars (\$250,000,000.00) combined single limit per occurrence, on occurrence form policy. Said limit shall be reduced to One Hundred Million Dollars (\$100,000,000.00) where Airline's maximum seating capacity on the largest aircraft operated at the Airport by Airline is sixty (60) or less. With respect to coverage for products/completed operations and personal injury, except with respect to passengers, a sublimit of not less than Twenty-Five Million Dollars (\$25,000,000.00) per occurrence, and in the annual aggregate, shall be permitted with the approval of the Director. Said aircraft liability shall be applicable to owned, non-owned, and hired aircraft.
 - ii. Auto liability policy in a minimum amount of five million dollars (\$5,000,000) for both bodily injury and property damage.
 - iii. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one million (\$1,000,000) limit each accident, disease aggregate, and disease each employee.
 - iv. Environmental impairment liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence. In lieu of environmental impairment liability insurance, Airline may submit proof of self-insurance by submitting a letter to City attesting to the limit and extent of coverage.
 - v. Liquor liability insurance for Airline serving alcoholic beverages in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence.
- B. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured throughout the term of the Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, or resulting from the negligent work, acts, operations, or omissions of Airline, its officers, agents, employees, invitees, and independent contractors on the Airport. Airline may show City as an additional insured with respect to Airline's operation at the Airport, provided, that Airline

shall then also show on the insurance policy that liability insurance coverage also includes contractual liability.

- C. Any and all of the above insurance coverages shall be on an “occurrence” basis, not on a “claims made” basis.
- D. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations at the Airport.
- E. Airline shall require its contractors operating at the Airport to procure and maintain insurance coverage to adequately cover risks associated with such contractor, or sublessee, reasonably appropriate in their limits and other terms and conditions to the nature of the entity’s operations. Such coverage shall insure the interests of the City and the City Indemnified Parties including by naming the City and City Indemnified Parties as additional insureds on such policies (except with respect to workers’ compensation/employer’s liability policies). When requested by the City, Airline shall provide, or cause to be provided, to the City certificates of insurance and copies of additional insured endorsements or such other evidence of insurance, reasonably acceptable in form and content to the City. Failure of any contractor to comply with required coverage and terms and condition outlined herein will not limit Airline’s liability or responsibility hereunder.

SECTION 11.02 INDEMNIFICATION

- A. INDEMNITY. EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY AS DETERMINED BY COURT OF COMPETENT JURISDICTION, AIRLINE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “INDEMNIFIED PARTIES”), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER, TO THE EXTENT ARISING OUT OF THIS AGREEMENT OR AIRLINE’S USE OF THE PREMISES OR THE AIRPORT (“CLAIMS”).**

NOTHING HEREIN SHALL SERVE TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW NOR ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR AIRLINE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF CITY OR AIRLINE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF

CITY FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.

AIRLINE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. AIRLINE SHALL UTILIZE LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE CITY, AND SUCH ACCEPTANCE SHALL NOT BE UNREASONABLY WITHHELD. AIRLINE WILL PROVIDE THE CITY WITH NOTICE OF ALL MEETINGS (INCLUDING THOSE RELATED TO SETTLEMENT) RELATED TO ANY CLAIM AGAINST THE CITY IN ADVANCE OF SUCH MEETING SO THAT THE CITY MAY ARRANGE TO OBSERVE PROVIDED THAT THE CITY SHALL BEAR THE COSTS OF SUCH OBSERVATION. THE CITY SHALL BE ALLOWED TO ATTEND AND PARTICIPATE IN ALL JUDICIAL PROCEEDINGS RELATED TO ANY CLAIM AGAINST THE CITY, PROVIDED THAT THE CITY SHALL BEAR THE COSTS OF SUCH PARTICIPATION. AIRLINE SHALL PROVIDE STATUS REPORTS AND INFORMATION REQUESTED BY THE CITY REGARDING ANY MEETINGS OR JUDICIAL PROCEEDINGS RELATED TO ANY CLAIM AGAINST THE CITY ON A TIMELY BASIS AND SHALL NOT UNREASONABLY WITHHOLD SUCH INFORMATION. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT AIRLINE'S INDEMNITY OBLIGATIONS. AIRLINE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR AIRLINE, AS AIRLINE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY AIRLINE. IN NO EVENT MAY AIRLINE ADMIT LIABILITY ON THE PART OF CITY WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.

- B. WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF AIRLINE'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.**
- C. CLAIMS AGAINST AIRLINE. IF ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE AIRLINE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE PREMISES, AIRLINE SHALL GIVE WRITTEN NOTICE THEREOF TO CITY WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM, DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS, AND IF THE CLAIM IS NOT WRITTEN OR THE INFORMATION IS NOT DISCERNABLE FROM THE WRITTEN CLAIM,**

THE WRITTEN NOTICE SHALL STATE THE DATE OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAKING SUCH CLAIM OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION, OR PROCEEDING; AND THE NAME OF ANY PERSON AGAINST WHO SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY, P.O. BOX 1890, EL PASO, TEXAS 79950-1890 OR TO SUCH REVISED ADDRESS AS NOTIFIED BY DIRECTOR.

- D. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT CITY'S ABILITY TO ADJUST RENTAL RATES AND OTHER FEES IN ACCORDANCE WITH THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICABLE LAWS AND REGULATIONS. FURTHERMORE, NO PROVISION IN THIS AGREEMENT IS INTENDED TO LIMIT CITY'S ABILITY TO ADJUST LANDING FEES OR IMPOSE OTHER FEES IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS.**
- E. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE AIRLINE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE AIRLINE.**
- F. CITY ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE PREMISES OR ANY PART THEREOF, AND CITY IS HEREBY EXPRESSLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY THAT MAY BE SUSTAINED BY REASON OF THE OCCUPANCY OF THE PREMISES UNDER THIS AGREEMENT, UNLESS SAME IS CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CITY, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.**

SECTION 11.03 NON-LIABILITY OF CITY

City shall not in any event be liable for any acts or omissions of Airline, its officers, agents, employees, invitees and independent contractors, or for any conditions resulting from the operations or activities of any such lessee, tenant, or concessionaire, Airline officers, agents, employees, invitees, or independent contractors, or for any conditions resulting from the operations or activities of Airline's officers, agents, employees, invitees or independent contractors either to Airline or to any other person.

City shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof.

SECTION 11.04 RELEASE OF LIABILITY REGARDING CERTAIN DAMAGES

City shall not be liable for, and is hereby released from all liability to Airline, to Airline's insurance carrier, or to anyone claiming under or through Airline for any loss or damage whatsoever to the property or effects of Airline resulting from the accidental discharge or discharge beyond City's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin. The provisions of this Section 11.04 shall not be construed as a limitation of City's rights pursuant to Section 11.02, but are additional to the rights and exclusions from liability provided in Section 11.02.

ARTICLE 12 - NO ASSIGNMENT OR SUBLEASE

SECTION 12.01 GENERAL

Airline shall not at any time transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Agreement or any part of the Premises. Airline shall not assign its interest under this Agreement or any part of the Premises to any party. Any attempted or actual transfer, conveyance, assignment or other such encumbrance shall be a material breach of this Agreement.

SECTION 12.02 BANKRUPTCY

Section 12.01 shall not apply to any valid assumption or assignment of this Agreement, the Premises, or any part thereof, by a trustee, or by Airline as a debtor in possession under the Bankruptcy Code of 1978, as amended, provided that adequate assurance of future performance as provided by the Bankruptcy Code of 1978, as amended, is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rentals, fees, and charges due under this Agreement upon the assumption or assignment of this Agreement;
- B. Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and
- C. The procurement of a bond from a financially reputable surety provider covering any costs or damages which City reasonably estimates City would incur in the event that City, within three (3) years following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the Premises covered by this Agreement under Article 4.

SECTION 12.03 [RESERVED]

SECTION 12.04 [RESERVED]

SECTION 12.05 [RESERVED]

ARTICLE 13 - DEFAULTS

SECTION 13.01 DEFAULT

If Airline: (1) fails to pay any payment past due hereunder within ten (10) calendar days after receipt of written notice of a past due account; (2) fails to keep and perform any of its other covenants and agreements within ten (10) calendar days after receipt of written notice of such failure (or, if such failure cannot be cured in ten (10) days, Airline fails to commence within ten (10) days and diligently pursue such cure, subject to the prior written approval of the Director of Airline's plan to cure, which shall not be unreasonably withheld or delayed); or (3) after such agreed upon cure period as specified in (2) Airline still fails to continue to complete, in a timely manner, any of its covenants and agreements after performance is commenced, after receipt of written notice of such failure (and after the expiration of any applicable cure period as specified in such written notice, or, if such failure cannot be cured in such time, if Airline fails to commence within such time and diligently pursue such cure, subject to the prior written approval of the Director, which shall not to be unreasonably withheld or delayed); or (4) after the filing of any petition, proceedings, or action by, for, or against Airline under any insolvency, bankruptcy, or reorganization act of law, then, at the election of City:

- A. Without terminating this Agreement, City may enter the Premises and improve and assign all or any part of it to others at its sole discretion. Any costs of renovation necessitated by the neglect of Airline, its agents, or its employees and an administrative fee to City for all costs incurred, shall be paid by Airline.
- B. At any time, City may terminate Airline's rights under this Agreement as provided in Section 14.03, without any restriction upon recovery by City for past due rentals and other obligations of Airline. City shall have all additional rights and remedies as may be provided to landlords by law.

ARTICLE 14 - TERMINATION

SECTION 14.01 TERMINATION UPON SIXTY DAYS' NOTICE

Either City or Airline may terminate this Agreement for any reason by giving the other party sixty (60) days advance written notice.

SECTION 14.02 CONDITIONS OF PREMISES AT TERMINATION

Upon termination of this Agreement, Airline shall vacate the Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of Director, reasonable wear and tear and casualty not caused by Airline or Airline's responsibility pursuant to the provisions of this Agreement excepted.

SECTION 14.03 EVENTS PERMITTING TERMINATION BY CITY

Subject to the provisions of Section 13, and in addition to the sixty- (60) day cancellation right provided in Section 2, City may terminate this Agreement and all of its obligations hereunder upon thirty (30) calendar days' written notice, with or without process of law, upon or after the occurrence of any one of the following events:

- A. Airline is in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Director has notified Airline in writing that payment was not received when due;
- B. Airline files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Airline's property;
- C. Airline makes any general assignment for the benefit of creditors;
- D. Airline abandons the Premises, which shall be defined as a cessation of Airline's activities at the Premises for more than thirty (30) days;
- E. Airline defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Airline, and such default continues after receipt of written notice from Director to cure such default in accordance with the provisions of Section 13;
- F. Airline is adjudged bankrupt in involuntary bankruptcy procedures;
- G. Airline is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Airline where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
- H. [RESERVED];
- I. The abolition, limitation, or restriction by any act of the Texas Legislature or Law of Congress of the powers of City under which these premises are being assigned, except with respect to legislation that grants authority to a successor;
- J. Airline fails to remit PFC revenue to City within the time limits established by federal regulation;

- K. Required redevelopment of the Airport caused by circumstances unplanned or uncontrolled by the Airport which necessitates relocation of Airline from the Premises; or
- L. Airline violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement.

In any of the aforesaid events, City may directy Airline to vacate the Premises immediately, including any and all improvements thereon and City may remove Airline's effects, forcibly if necessary.

Failure of City to declare this Agreement canceled upon the default of Airline for any of the reasons set out shall not operate to bar or destroy the right of City to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by City from Airline after the expiration or cancellation of this Agreement, or after the service of any notice, or after the commencement of any suit, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which City's consent is required or operate as a waiver of any right of City under this Agreement.

ARTICLE 15 - GENERAL PROVISIONS

SECTION 15.01 RULES AND REGULATIONS

- A. Airline shall observe and obey all Rules and Regulations established, promulgated, or adopted consistent with this Agreement from time to time during the term hereof, by City governing conduct on and operations at the Airport and use of its facilities. Copies of the Rules and Regulations shall be forwarded to Airline's local manager upon request of Airline.
- B. Airline shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Airline's behalf to violate any such Rules and Regulations.

SECTION 15.02 COMPLIANCE WITH LAW

- A. Airline shall not use the Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances and laws of any City, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make

and enforce rules or regulations with respect to the uses hereunder or the Premises.

- B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:
1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.
 2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its assigned space (subject to prior written approval of City), equipment, and personal property that are required to comply with or conform to any such statutes and ordinances, and regulations which are promulgated or enacted by City.
 3. Be and remain an independent contractor with respect to all installations, construction, and services performed by the Airline or on behalf of Airline hereunder.

SECTION 15.03 NONDISCRIMINATION

Airline acknowledges that the City is required by the FAA under the terms of its Grant Assurances to include in this Agreement certain required contract provisions, included as Exhibit G hereto ("Required Federal Provisions"). Airline agrees to comply with the Required Federal Provisions and, where applicable, include the Required Federal Provisions in each of its subcontracts without limitation or alteration. Airline acknowledges that a failure to comply with the Required Federal Provisions constitutes an event of default under this Agreement. Airline further acknowledges that the FAA may from time to time amend such required contract provisions and agrees that the City may unilaterally modify the Required Federal Provisions to the extent such modification is necessary to comply with its Grant Assurances by providing Airline with notification of such modification and an updated Exhibit G.

SECTION 15.04 AFFIRMATIVE ACTION

Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from City, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Section. Airline assures that it will require that its covered suborganizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and

that they will require assurance from their suborganizations (sublessees) to the same effect.

SECTION 15.05 NOTICES

- A. Any notice under the terms of this Agreement shall be in writing. If such notice is given by Airline, it shall be submitted to Director of Aviation, El Paso International Airport, 6701 Convair Road, El Paso, Texas 79925-1091, or to such revised address as notified by Director. If given by Director, such notice shall be submitted to the address of Airline at the following address:

Attn: _____
ADDRESS: _____

- B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.
- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) or more days prior written notice to the other party in the manner set forth in this Section.

SECTION 15.06 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time ("Grant Assurances"). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, the City has the right to amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation. Airline further agrees that it shall not knowingly cause the City to violate any Grant Assurances made by the City to the federal government in connection with the granting of such Federal funds.

SECTION 15.07 NONWAIVER OF RIGHTS

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated shall never be construed to be a waiver of any other or

succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of City of any of the provisions herein imposed upon Airline.

SECTION 15.08 FEDERAL AVIATION ACT, SECTION 308

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended or succeeded, for the conduct of any activity on the Airport.

SECTION 15.09 SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there shall be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

SECTION 15.10 HEADINGS

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

SECTION 15.11 ASSIGNMENT BY CITY OR OTHER SUCCESSOR IN INTEREST

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with respect to this Agreement and their rights and interests hereunder for any purpose relating to the issuance of Bonds or other revenue generating devices.

SECTION 15.12 REDEVELOPMENT

If this Agreement is terminated as provided by Section 14.03 (K) as a result of physical changes associated with the development of the Airport, Airline waives any and all rights to reimbursements, allowances, loans, or other forms of payment for relocation, rental or any other costs which might apply to tenants in other locations who are required to relocate due to construction of public facilities.

SECTION 15.13 REMOVAL OF DISABLED AIRCRAFT

Airline shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions)

and place any such disabled aircraft in such storage area as may be designated by Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City.

SECTION 15.14 [RESERVED]

SECTION 15.15 AGREEMENT SUBJECT TO COVENANTS IN DEED

It is mutually agreed that this Agreement is made subject to the covenants, requirements, and restrictions contained in the Deed by which City obtained title to Airport from the Government of the United States.

SECTION 15.16 FORCE MAJEURE

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

SECTION 15.17 ENTIRE AGREEMENT

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

SECTION 15.18 TIME IS OF THE ESSENCE

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

SECTION 15.19 ATTORNEY'S FEES

If either party brings any action or proceedings to enforce, protect, or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

SECTION 15.20 AGREEMENT MADE IN TEXAS

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas or in the federal district courts of the Western District of Texas or in the U.S. Department of Transportation, as applicable.

SECTION 15.21 CUMULATIVE RIGHTS AND REMEDIES

All rights and remedies of City here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by City of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

SECTION 15.22 INTERPRETATION

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

SECTION 15.23 AGREEMENT MADE IN WRITING

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

SECTION 15.24 SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon City and Airline and their successors, assigns, legal representatives, heirs, executors and administrators.

SECTION 15.25 AUTHORIZATION TO ENTER AGREEMENT

If Airline signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Airline warrants to City that Airline is a duly authorized and existing corporation, that Airline is qualified to do business in the State of Texas, that Airline has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Airline is authorized to do so. Upon Director's request, Airline will provide evidence satisfactory to Director confirming these representations.

SECTION 15.26 COMPLIANCE WITH ADA AND OTHER DISABLED ACCESS LAWS

Airline agrees that with respect to the Premises, Airline shall be responsible, at Airline's cost, for compliance with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Airline recognizes that City is a public entity

subject to Title II of the ADA. To the extent permitted by law, Airline shall assume and be obligated to comply with any obligations to which City may be subject to under Title II of the ADA with respect to any programs, services, activities, alterations, or construction conducted or undertaken by Airline in the Premises. Airline shall also be responsible, at Airline's cost, for compliance with any other applicable disabled accessibility laws, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. §41705), and regulations implementing the ACAA.

SECTION 15.27 [RESERVED]

SECTION 15.28 AIRLINE DEREGULATION ACT

Nothing contained in this Agreement is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713), of any state or local law or ordinance, or the Rules and Regulations.

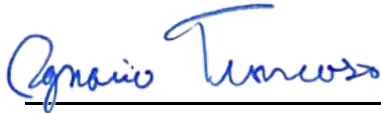
IN WITNESS WHEREOF, these presents have been executed, attested and ensealed by the parties hereto or their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first above written.

(Signatures begin on the following pages)

CITY OF EL PASO

Cary Westin
City Manager

APPROVED AS TO FORM:



Ignacio R. Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 20____, by Cary Westin, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

(Airline Signature Page)

ATTEST:

AIRLINE: _____

Signature
Printed Name: _____
Title: _____
Date: _____

Signature
Printed Name: _____
Title: _____
Date: _____

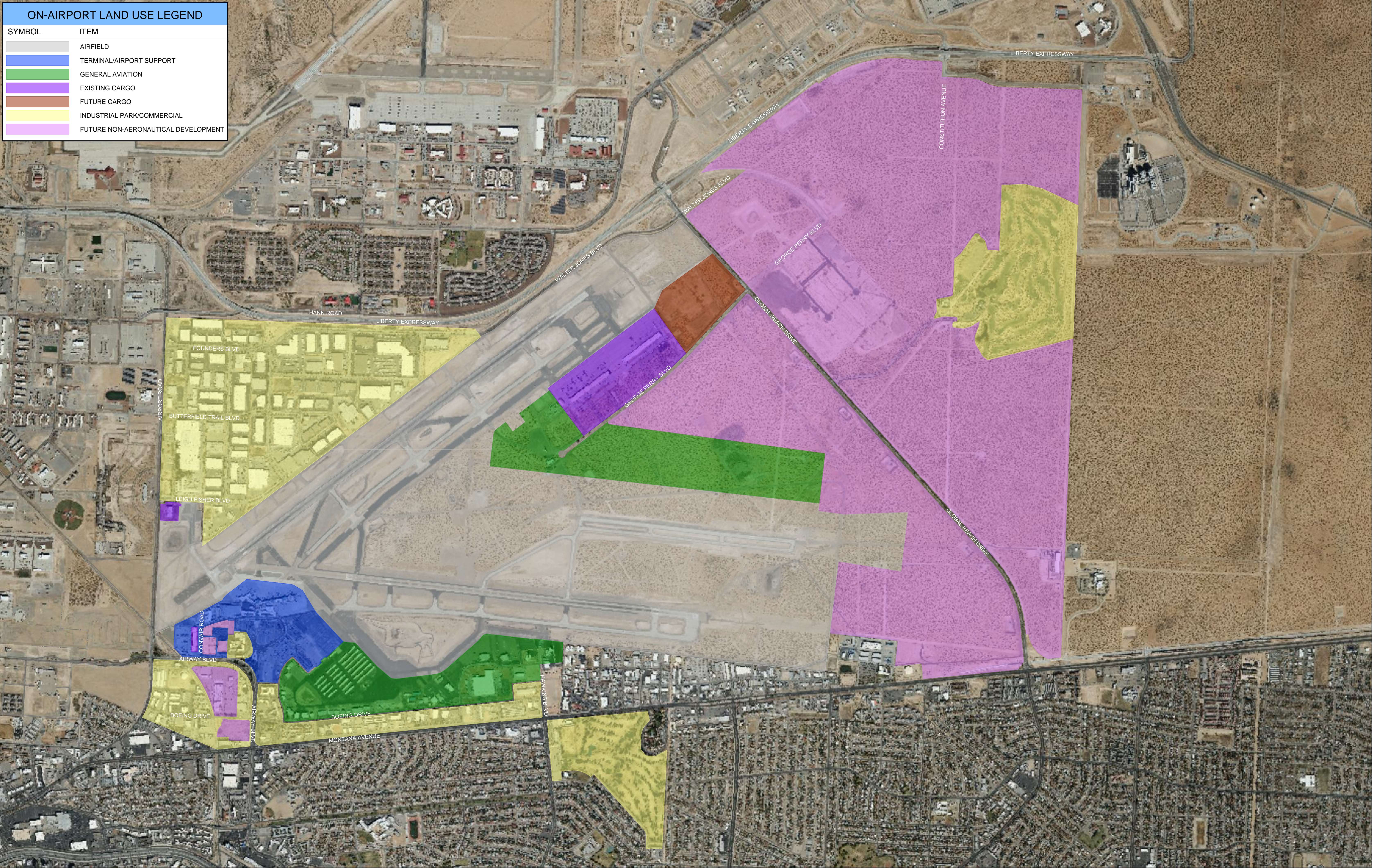
ACKNOWLEDGMENT

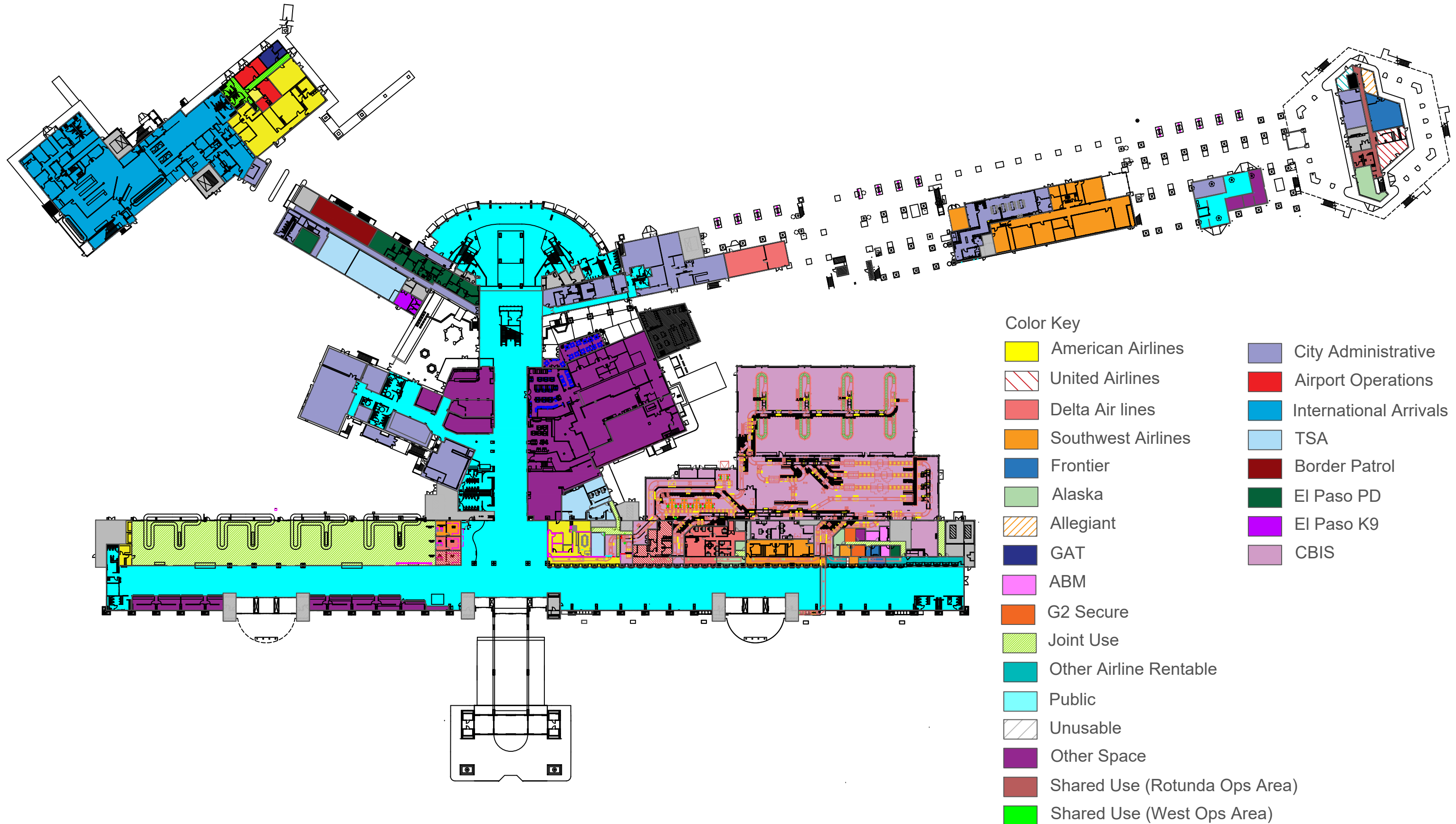
THE STATE OF _____)
_____)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 20____, by _____, as _____, of _____ (Airline).

My Commission Expires:

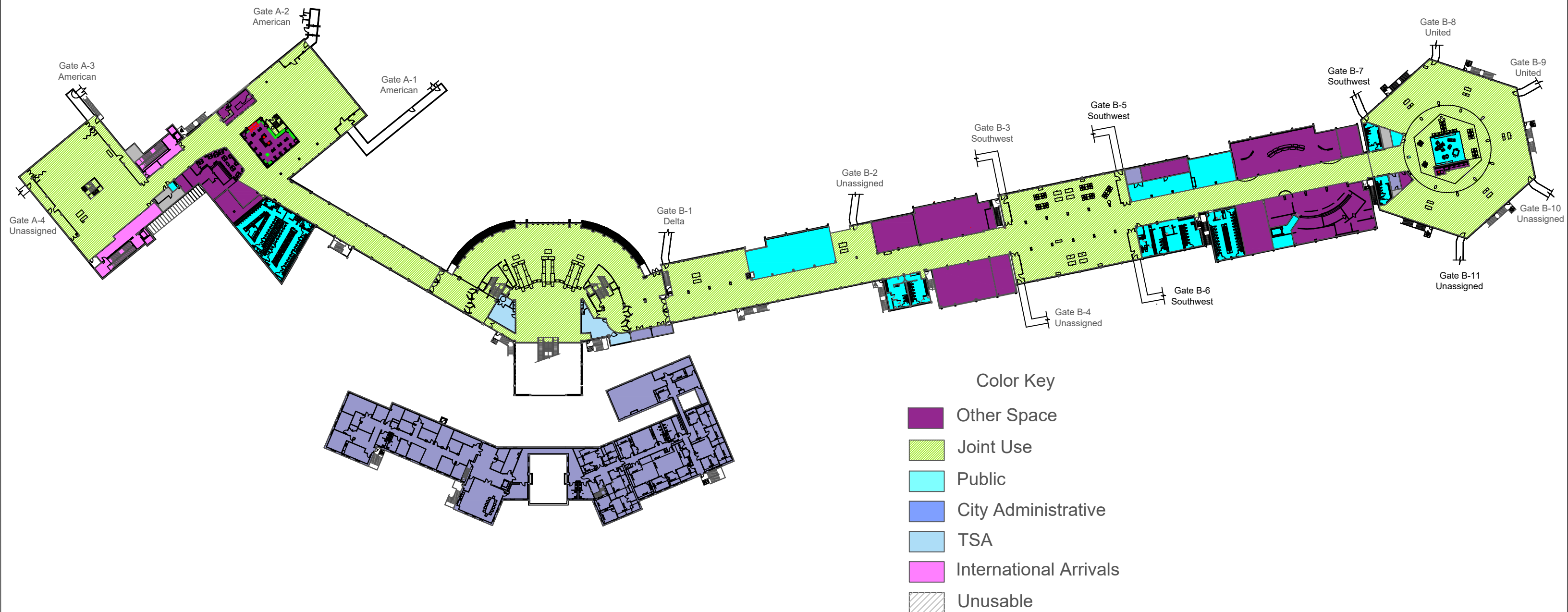
Notary Public, State of _____





El Paso International Airport - Airline Operating Agreement and Terminal Building Lease

Exhibit "B", drawing depicts terminal as of March 25, 2024 - Level 1



El Paso International Airport - Airline Operating Agreement and Terminal Building Lease

Exhibit "B", drawing depicts terminal as of March 25, 2024 - Level 2

EXHIBIT "C"
To
**The El Paso International Airport Airline Operating Agreement And Terminal
Building Lease (The Agreement)**

RATE AND FEE SCHEDULE

SECTION 1 DEFINITIONS

The following words, terms and phrases used in this Exhibit "C" shall have the meanings set forth in this Section and the meanings shall apply to both the singular and plural forms of such words, terms, and phrases. Additional words, terms and phrases used in this Exhibit "C", but not defined in this Section, shall have the meanings ascribed to them in the individual sections of this Exhibit "C", the Agreement or Bond Ordinance. The specific methodologies for calculating the rates, fees and charges defined below can be found in Section 2 of this Exhibit "C".

"Apron" means the area of the Airport where the aircraft are parked, unloaded or loaded, refueled or boarded.

"Checked Baggage Inspection System (CBIS)" means the automated baggage handling system overseen by the TSA that is responsible for detecting prohibited and dangerous items in passengers' checked baggage.

"CBIS Fee" means any Air Transportation Company using the CBIS shall pay a CBIS Fee per passenger in accordance with Table C-6 of this Exhibit "C".

"Federal Inspection Fee (FIS)" means a fee paid by an Air Transportation Company to process deplaned international passengers at the Airport.

"Fuel Flowage Fees" means total fees paid to the City for fuel distributed on the Airport.

"Gate Per Use Fee" means any non-Signatory Air Transportation Company using a gate, as described in Section 4.02 of the Agreement, on a non-preferential basis shall pay a Gate Per Use Fee for each Turn on such gate as presented in Table C-5 of this Exhibit "C".

"Joint Use Fee" means any Air Transport Company using Joint Use Premises shall pay a Joint Use Fee for each enplanement and Signatory Airlines shall pay a Joint Use Fee for each gate in accordance with Table C-3 of this Exhibit "C".

"Landing Area" means the area used or intended for use in landing, taking off, or taxiing of aircraft, excluding area and facilities for shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo.

“Landing Area Credit” means the sum of Non-Signatory Airline Landing Fees, equipment parking rentals, air cargo apron rentals, RON Fees, Fuel Flowage Fees, and other miscellaneous revenue that is used to offset the Landing Area Costs in the Signatory Airline Landing Fee Requirement.

“Landing Fee Rate” means the fee paid per one thousand (1,000) pound units of landed weight for use of the Landing Area, calculated pursuant to Table C-1 of this Exhibit “C”.

“Maintenance and Operating Reserve Account” means the reserve account for Maintenance and Operating Expenses that is required by the Bond Ordinance and described further in Section 8 of the Agreement.

“Non-Signatory Airline” means any Air Transportation Company that has not entered into an agreement, substantially similar to this Agreement, with the City.

“Non-Signatory Airline Premium” means the premium charged to airlines not signatory to the Agreement. For most fees, this is equal to 125 percent of the fees charged to Signatory Airlines.

“Passenger Security Screening Fees” means the fees charged for the security screening of passengers in the terminal, as calculated in Table C-7 of this Exhibit “C”.

“Remain Overnight (RON) Fees” means the fees charged to aircraft utilizing the Airport’s ramps/apron remaining overnight.

“Signatory Airline Landing Fee Requirement” means the Landing Area Cost credited with all revenues derived from the operation of the Landing Area (except revenues derived from Signatory Airline landing fees), as estimated by the City.

“Terminal Building” means the terminal building and connected concourses which serve Air Transportation Companies and other terminal tenants, as indicated on Exhibit B as such exhibits may be amended from time to time.

“Terminal Building Rental Rate” means the rate charged to the airlines for use of the Terminal Building as calculated in Table C-2 of this Exhibit “C”.

“Ticket Counter Per Use Fee” means any Air Transportation Company using a ticket counter on a non-preferential basis shall pay a Ticket Counter Per Use Fee for each Turn on such ticket counter as calculated in Table C-4 of this Exhibit “C”.

“Turn” means the arrival and subsequent departure of an aircraft at a gate at the Airport for any reason, including any tow to or from a gate.

SECTION 2 RATE CALCULATIONS

This section includes the methodology for calculating the Landing Fee Rate, Terminal Rental Rate, Joint Use Fee, Gate Per Use Fee, Ticket Counter Per Use Fee, Checked Baggage Inspection System Fees, Security Screening Fee for the Term of the Agreement. The rates for Fiscal Year 2024 are presented in this Exhibit and will be recalculated annually, prior to the start of the Fiscal Year.

1. Explanation of Landing Fee Rate Calculation Line Items. The following line items listed in Table C-1 are included in the calculation of the Landing Fee Rate for each rate setting period. Each line item in Table C-1 is identified by the corresponding letter set forth below.

Line Item A. Total Landing Area Costs. This line item includes the total of estimated direct and indirect Maintenance and Operating Expenses including any allocable bad debt expense allocable to the Landing Area, Equipment and Capital Outlays allocable to the Landing Area, Annual Amortization Recovery allocable to the Landing Area, the pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Landing Area, the estimated amount of any deficiency in the Renewal and Replacement Account as of the last day of the current Fiscal Year resulting from an expenditure allocable to the Landing Area, the pro rata portion allocable to the Landing Area of deposits to the Maintenance and Operating Reserve Account required in the Bond Ordinance, the pro rata portion allocable to the Landing Area of any other deposits to reserve accounts as set forth in Article 8 of the Agreement and established pursuant to the Bond Ordinance, and the estimated amount of any assessment, judgment, settlement, or charge to become payable by City net of proceeds of City's insurance relating directly to the Airport or its operation and allocable to the Landing Area.

Line Item B. Total Landing Area Credits. This line item includes all revenues derived from the operation of the Landing Area (except revenues derived from Signatory Airline landing fees), as estimated by the City.

Line Item C. Signatory Airline Landing Fee Requirement. This line item includes Total Landing Area Costs less Total Landing Area Credits.

Line Item D. Signatory Airline Landed Weight (1,000 lb units) - Passenger. This line item shall be equal to the estimated Signatory Airline Landed Weight of passenger airlines for the upcoming Fiscal Year.

Line Item E. Signatory Airline Landed Weight (1,000 lb units) - Cargo. This line item shall be equal to the estimated Signatory Airline Landed Weight of cargo airlines for the upcoming Fiscal Year.

Line Item F. Signatory Airline Landing Fee Rate (1,000 lb units). This line item shall be equal to Signatory Airline Landing Fee Requirement divided by the sum of Signatory Airline Landed Weight - Passenger and Signatory Airline Landed Weight - Cargo.

Line Item G. Non-Signatory Airline Premium. This line item shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item H. Non-Signatory Airline Landing Fee Rate (1,000lb units). This line item shall be equal to the product of Signatory Airline Landing Fee Rate and Non-Signatory Airline Premium.

Table C-1. Landing Fees		
Description	Line Item	FY 2024
Total Landing Area Costs	A	\$5,492,117
Total Landing Area Credits	B	\$1,705,302
Signatory Airline Landing Fee Requirement	$C = A - B$	\$3,786,815
Signatory Airline Landed Weight (1,000 lb units)-Passenger	D	2,189,675
Signatory Airline Landed Weight (1,000 lb units)-Cargo	E	591,175
Signatory Airline Landing Fee Rate (1,000 lb units)	$F = C / (D + E)$	\$1.36
Non-Signatory Airline Premium	G	125%
Non-Signatory Airline Landing Fee Rate (1,000 lb units)	$H = F * G$	\$1.70

2. Explanation of Terminal Building Rental Rate Calculation Line Items. The following line items listed in Table C-2 are included in the calculation of Terminal Building Rental Rate for each rate setting period. Each line item in Table C-2 is identified by the corresponding letter set forth below.

Line Item A. Terminal Building Cost. This line item includes the total of estimated direct and indirect Maintenance and Operating Expenses including any allocable bad debt expense allocable to the Terminal Building, Equipment and Capital Outlays allocable to the Terminal Building, Annual Amortization Recovery allocable to the Terminal Building, the pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Terminal Building, the estimated amount of any deficiency in the Renewal and Replacement Account as of the last day of the current Fiscal Year resulting from an expenditure allocable to the Terminal Building, the pro rata portion allocable to the Terminal Building of deposits to the

Maintenance and Operating Reserve Account required in the Bond Ordinance, the pro rata portion allocable to the Terminal Building of any other deposits to reserve accounts as set forth in Article 8 of the Agreement and established pursuant to the Bond Ordinance, and the estimated amount of any assessment, judgment, settlement, or charge to become payable by City net of proceeds of City's insurance relating directly to the Airport or its operation and allocable to the Terminal Building.

Line Item B. Terminal Building Credits. This line item shall be equal to the sum of direct electricity charges and Security Screening Fees.

Line Item C. Net Terminal Building Requirement. This line item shall be equal to the Signatory Terminal Building Cost less Terminal Building Credits.

Line Item D. Usable Space (square feet). This line includes the gross space in the Terminal Building at the Airport less mechanical and related storage space and service areas as identified on Exhibit B.

Line Item E. Signatory Airline Terminal Building Rental Rate. This line shall be equal to the estimated Net Terminal Building Requirement for the Fiscal Year divided by the total amount of Usable Space in the Terminal Building.

Line Item F. Non-Signatory Airline Premium. This line shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item G. Non-Signatory Airline Terminal Building Rental Rate. This line shall be equal to the product of the Signatory Airline Rental Rate and the Non-Signatory Airline premium.

Table C-2. Terminal Building Rental Rate		
Description	Line Item	FY 2024
Terminal Building Costs	A	\$16,918,847
Terminal Building Credits	B	\$668,076
Net Terminal Building Requirement	$C = A - B$	\$16,250,772
Usable Space (square feet)	D	334,811
Signatory Airline Terminal Building Rental Rate	$E = C / D$	\$48.54
Non-Signatory Airline Premium	F	125%

Non-Signatory Airline Terminal Building Rental Rate	$G = E * F$	\$60.67
-----------------------------------------------------	-------------	---------

3. Explanation of Joint Use Fee Calculation Line Items. The following line items listed in Table C-3 are included in the calculation of Joint Use Fee for each rate setting period. Each line item in Table C-3 is identified by the corresponding letter set forth below.

Line Item A. Total Joint Use Space. This line item shall be equal to Total Joint Use Space in the Terminal Building.

Line Item B. Terminal Building Rental Rate. This line item shall be equal to the Signatory Terminal Building Rental Rate calculated in Table C-2.

Line Item C. Total Joint Use Premises Requirement. This line item shall be equal to the Total Joint Use Space multiplied by the Signatory Terminal Building Rental Rate.

Line Item D. Gate Per Use Fee Revenue. This line item shall be equal to the Gate Per Use Fee (\$125.00, as described in Table C-5) multiplied by the total number of Turns for all airlines in the upcoming Fiscal Year.

Line Item E. Net Joint Use Space Requirement. This line item shall be equal to Total Joint Use Premises Space multiplied by Signatory Terminal Building Rental Rate minus Gate Per Use Fee Revenue.

Line Item F. Total Enplaned Passengers. This line item is the sum of the estimated Signatory Airlines Enplaned Passengers and Non-Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item G. Average Joint Use Fee Per Enplaned Passenger. This line item is the Net Joint Use Space Requirement divided by Total Enplaned Passengers.

Line Item H. Non-Signatory Airline Premium. This line item shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item I. Non-Signatory Joint Use Fee Per Enplaned Passenger. This line item is the Average Joint Use Fee Per Enplaned Passenger multiplied by the Non-Signatory Airline Premium.

Line Item J. Non-Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Non-Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item K. Non-Signatory Joint Use Space Requirement. This line item shall be equal to the Non-Signatory Joint Use Fee Per Enplaned Passenger multiplied by Non-Signatory Airlines Enplaned Passengers.

Line Item L. Signatory Joint Use Space Requirement. This line item shall be equal to the Joint Use Space Requirement less the Non-Signatory Requirement.

Line Item M. Enplaned Passenger Share. This line item should be equal to Eighty percent (80%).

Line Item N. Gate Share. This line item should be equal to Twenty percent (20%).

Line Item O. Enplaned Passenger Joint Use Space Requirement. This line item shall be equal to the Signatory Joint Use Space Requirement multiplied by Enplaned Passenger Share.

Line Item P. Gate Joint Use Space Requirement. This line item shall be equal to the Signatory Joint Use Space Requirement multiplied by Gate Share.

Line Item Q. Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item R. Signatory Joint Use Fee Per Enplaned Passenger. This line item shall be equal to the Signatory Joint Use Space Requirement divided by Signatory Airlines Enplaned Passengers.

Line Item S. Number of Preferentially Assigned Gates. This line item shall be equal to the number of preferentially assigned Gates in the upcoming Fiscal Year.

Line Item T. Signatory Joint Use Fee Per Gate. This line item shall be equal to the Gate Joint Use Space Requirement divided by the Number of Preferential Assigned Gates.

Table C-3. Joint Use Fee		
Description	Line Item	FY 2024
Total Joint Use Space (square feet)	A	103,004
Signatory Terminal Building Rental Rate	B	\$48.54
Total Joint Use Premises Requirement	$C = A * B$	\$4,999,521
Gate Per Use Revenues	D	\$272,500
Net Joint Use Space Requirement	$E = C - D$	\$4,727,021
Total Enplaned Passengers	F	2,071,635
Average Joint Use Fee Per Enplaned Passenger	$G = E / F$	\$2.28
Non-Signatory Airline Premium	H	125%
Non-Signatory Joint Use Fee Per Enplaned Passenger	$I = G * H$	\$2.85
Non-Signatory Airlines Enplaned Passengers	J	133,077
Non-Signatory Joint Use Space Requirement	$K = I * J$	\$379,566
Signatory Joint Use Space Requirement	$L = E - K$	\$4,347,454
Enplaned Passenger Share	M	80%
Gate Share	N	20%
Enplaned Passenger Joint Use Space Requirement	$O = L * M$	\$3,477,964
Gate Joint Use Space Requirement	$P = L * N$	\$869,491
Signatory Airlines Enplaned Passengers	Q	1,938,558
Signatory Joint Use Fee Per Enplaned Passenger	$R = O / Q$	\$1.79
Number of Preferentially Assigned Gates	S	10
Signatory Joint Use Fee Per Gate	$T = P / S$	\$86,949

4. Explanation of Ticket Counter Per Use Fee Calculation Line Items. The following line items listed in Table C-4 are included in the calculation of Ticket Counter Per Use Fee for each rate setting period. Each line item in Table C-4 is identified by the corresponding letter set forth below.

Line Item A. Average Ticket Counter Square Feet. This line item shall be equal to the average square footage for one ticket counter.

Line Item B. Signatory Airline Terminal Building Rental Rate. This line item includes the estimated Terminal Building Requirement for the Fiscal

Year divided by the total amount of Usable Space in the Terminal Building to determine the Signatory Airline Terminal Building Rental Rate per square foot, as shown in Exhibit C-2.

Line Item C. Annual Ticket Counter Cost. This line item shall be equal to the product of Average Ticket Counter Square Feet and the Signatory Airline Terminal Building Rental Rate.

Line Item D. Days Ticket Counter in Use. This line item shall be equal to Three Hundred and Sixty-Five (365).

Line Item E. Turns Per Day. This line item shall be equal to the estimated turns occurring per Gate per day.

Line Item F. Ticket Counter Per Use Fee. This Line item shall be equal to the Annual Ticket Counter Cost divided by Days Ticket Counter in Use divided by Turns Per Day.

Line Item G. Non-Signatory Airline Premium. This line shall be equal to One Hundred and Twenty-Five percent (125%).

Line Item H. Non-Signatory Airline Ticket Counter Per Use Fee. This line item shall be equal to the product of the Signatory Airline Ticket Counter Per Use Fee and the Non-Signatory Airline Premium.

Table C-4. Ticket Counter Per Use Fee		
Description	Line Item	FY 2024
Average Ticket Counter Square Feet	A	253
Signatory Airline Terminal Building Rental Rate	B	\$48.54
Annual Ticket Counter Cost	$C = A * B$	\$12,280
Days Ticket Counter in Use	D	365
Turns Per Day	E	3
Ticket Counter Per Use Fee	$F = C / D / E$	\$11.21
Non-Signatory Airline Premium	G	125%
Non-Signatory Airline Ticket Counter Per Use Fee	$H = F * G$	\$14.02

5. Explanation of Gate Per Use Fee Calculation Line Items. The line item listed in Table C-5 is the Gate Per Use Fee for each rate setting period. The line item in Table C-5 is identified by the corresponding letter set forth below.

Line Item A. Gate Per Use Fee. This line item shall be equal to One Hundred and Twenty-Five (125) dollars.

Table C-5. Gate Per Use Fee		
Gate Per Use Fee (per turn)	A	\$125.00

6. Explanation of Checked Baggage Inspection System (CBIS) Fee Calculation Line Items. The following line items listed in Table C-6 are included in the calculation of CBIS Fee for each rate setting period. Each line item in Table C-6 is identified by the corresponding letter set forth below.

Line Item A. Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item B. Non-Signatory Airlines Enplaned Passengers. This line item shall be equal to the estimated Non-Signatory Airlines Enplaned Passengers for the upcoming Fiscal Year.

Line Item C. Total Enplaned Passengers. This line item is the sum of the Signatory Airlines Enplaned Passengers and Non-Signatory Airlines Enplaned Passengers line items.

Line Item D. Total CBIS Costs. This line item shall be equal to the sum of M&O Expenses, back up parts, electricity, water, natural gas, and administration costs associated with the CBIS.

Line Item E. Non-Signatory Airline Revenue Credit. This line item shall be equal to the product of Non-Signatory CBIS Fee Per Enplaned Passenger and Non-Signatory Airlines Enplaned Passengers.

Line Item F. Signatory Airline CBIS Requirement. This line item shall be equal to the Total CBIS Costs less Non-Signatory Airline Revenue Credit.

Line Item G. Signatory Airline CBIS Fee Per Enplaned Passenger. This line item shall be equal to Signatory Airline CBIS Requirement divided by Signatory Airlines Enplaned Passengers.

Line Item H. Non-Signatory Airline Premium. This line item shall be equal to One Hundred and Twenty-Five Percent (125%).

Line Item I. Non-Signatory Airline CBIS Fee Per Enplaned Passenger. This line item shall be the product of Signatory Airline CBIS Fee Per Enplaned Passenger and the Non-Signatory Airline Premium.

Table C-6. CBIS Fee		
Description	Line Item	FY 2024
Signatory Airlines Enplaned Passengers	A	1,938,558
Non-Signatory Airlines Enplaned Passengers	B	135,052
Total Enplaned Passengers	$C = A + B$	2,073,609
Total CBIS Costs	D	\$1,278,300
Non-Signatory Airline CBIS Revenue Credit	$E = H * B$	\$102,400
Signatory Airline CBIS Requirement	$F = D - E$	\$1,175,900
Signatory Airline CBIS Fee Per Enplaned Passenger	$G = F / A$	\$0.61
Non-Signatory Airline Premium	H	125%
Non-Signatory Airline CBIS Fee Per Enplaned Passenger	$I = G * H$	\$0.76

7. Explanation of Security Screening Fee Calculation Line Items. The following line items listed in Table C-7 are included in the calculation of Security Screening Fee for each rate setting period. Each line item in Table C-7 is identified by the corresponding letter set forth below.

Line Item A. Law Enforcement Officer Operating Expenses. This amount shall be the City's actual cost of providing armed law enforcement support for the security screening operation in the Terminal Building as required by 49 CFR Part 1542.

Line Item B. Total Enplaned Passengers. This line item shall be equal to the estimated Total Enplaned Passengers for the upcoming Fiscal Year.

Line Item C. Security Screening Fee. This line shall be equal to the Law Enforcement Officer Operating Expenses divided by Total Enplaned Passengers.

Table C-7. Security Screening Fee		
Description	Line Item	FY 2024
Law Enforcement Officer Operating Expenses	A	\$322,355
Total Enplaned Passengers	B	2,073,609
Security Screening Fee	$C = A / B$	\$0.16

**ATTACHMENT “C-1”
TO EXHIBIT “C”**

**STATEMENT OF RATES
FISCAL YEAR 2024**

(September 1, 2023, through August 31, 2024)

Section 1 – FY 2024 SUMMARY OF RATES

1. Landing Fee Rate. Signatory Airline: \$1.36 per 1,000 pounds of Maximum Gross Landed Weight. Non-Signatory Airline: \$1.70 per 1,000 pounds of Maximum Gross Landed Weight.
2. Terminal Building Rental Rate. Signatory Airline: \$48.54 per square foot. Non-Signatory Airline: \$60.67 per square foot.
3. Joint Use Fee. Signatory Airline: \$1.79 per Enplaned Passenger, \$86,949 per Preferentially Assigned Gate. Non-Signatory Airline: \$2.85 per Enplaned Passenger.
4. Ticket Counter Per Use Fee. Signatory Airline: \$11.21 per Turn. Non-Signatory Airline: \$14.01 per Turn.
5. Gate Per Use Fee. Signatory Airline: \$125.00 per Turn. Non-Signatory Airline: \$125.00 per Turn.
6. Checked Baggage Inspection System Fee. Signatory Airline: \$0.61 per Enplaned Passenger. Non-Signatory Airline: \$0.76 per Enplaned Passenger.
7. Security Screening Fee. Signatory Airline: \$0.16 per Enplaned Passenger. Non-Signatory Airline: \$0.16 per Enplaned Passenger.
8. RON Fee. \$20.00 per Night.
9. Airline Direct Electricity Charges. \$3.24 per square foot of rented airline Exclusive Use Premises.
10. Equipment Parking Rentals. \$2.96 per square foot.
11. FIS Fee. \$7.00 per Deplaned Passenger utilizing FIS facilities in the International Arrivals Area.

OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES AIRLINES AND CITY

The following matrix identifies the responsible party (either the City or Airline) who shall, at its sole cost, be responsible for the maintenance, repair, service, and/or provision of the specifically identified Premises, appurtenances, or services in connection with the operation or maintenance. The City shall not be responsible for any prior or subsequent installation, appurtenance or system by Airline. The City shall not be responsible for any prior or subsequent Airline modification of City-provided Airline Premises, appurtenance, system or service. Airline shall have the duty to restore the Premises, at its sole cost, into the original condition prior to vacating Airline's Premises, including the de-installation of any Airline modification and Airline appurtenance, system or service, at the sole discretion of the City. If Airline is positively determined to have damaged Premises or misused an City-provided appurtenance or system, said Airline may be charged for maintenance and repairs.

NOTE 1: All installations, repairs, replacements, alterations, or improvements undertaken by Airline must first be submitted for approval by the City.

NOTE 2: The responsibilities of the City listed below apply to normal wear and tear only. Any damage caused by Airline's negligence will be the responsibility of the Airline.

NOTE 3: All operations, maintenance and service responsibilities in Public Use Space is the responsibility of the City, except when damage is caused by Airline's negligence.

NOTE 4: Airline shall notify City, in writing, of any maintenance or repairs needed which are the responsibility of the City.

LEGEND	
ELP = City	N/A = Not Applicable
A = Airline	

A. OPS, MAINTENANCE AND SERVICE AREAS	SPACE						
	EXCLUSIVE				SHARED	JOINT	
	PREFERENTIAL SPACE (Ticket Counter)	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED SPACE	HOLD ROOMS	BAG CLAIM
BUILDING - EXTERIOR							
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation and Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Lighting Mounted on Outside of Building	N/A	ELP	N/A	ELP	ELP	ELP	ELP
Roof	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Walls and Load-Bearing Structures	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Windows	N/A	N/A	N/A	ELP	ELP	ELP	ELP
BUILDING INTERIOR							
Backwall Finish and Signage	A	N/A	A	N/A	N/A	A	N/A
Counter Shell/Exterior Casement, Countertops	ELP	N/A	N/A	N/A	N/A	ELP	N/A
Counter Insert Cabinetry, Kiosks	A	N/A	N/A	N/A	N/A	A	N/A
Ceiling Tiles	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Flooring: Carpet & Tile	A	A	A	A	A	ELP	ELP
Furnishings and Fixtures	A	A	A	A	A	ELP	ELP
HVAC: Building System Maintenance & Air Distribution	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation/Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Interior Wall Windows	A	A	A	A	A	ELP	ELP
Paint and Wall Finishes ¹	A	A	A	A	A	ELP	ELP
Passenger Seating - Installation and Maintenance	N/A	N/A	N/A	N/A	N/A	ELP	ELP
Stanchions	A	N/A	A	N/A	N/A	A	N/A
COMMUNICATIONS							
Public Address System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Communication Lines/Conduit: To D-Mark ²	A	A	A	A	A	A	A
Communication Lines/Conduit: From D-Mark ²	ELP	ELP	ELP	ELP	ELP	ELP	ELP
FIDS (City owned)	N/A	N/A	N/A	N/A	N/A	ELP	ELP
DOOR LOCKS, LOCKSETS AND KEYS							
ELP-Required locks, locksets and keys ³	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Non-ELP required	A	A	A	A	A	ELP	ELP
EQUIPMENT AND COMPUTER SYSTEMS							
Airline Proprietary Computer System	A	A	A	A	N/A	A	N/A
Airline Ticketing and Gate Equipment	A	A	A	A	N/A	A	N/A
Broadband Access	A	A	A	A	N/A	A	N/A
Radio, Meteorological and Aerial Navigation Equipment	A	A	A	A	N/A	A	N/A
Ticket Counter Scales	A	N/A	N/A	N/A	N/A	N/A	N/A
FIRE ALARM SYSTEM & OTHER EQUIPMENT							
Fire Alarm System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Fire Extinguishers ⁴	A	A	A	A	A	ELP	ELP

OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES AIRLINES AND CITY

		SPACE						
		EXCLUSIVE				JOINT		
A. OPS, MAINTENANCE AND SERVICE AREAS		PREFERENTIAL SPACE (Ticket Counter)	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED	HOLD ROOMS	BAG CLAIM
FIXTURES, ELECTRICAL/ENERGY (CONT.)								
Bulb & Tube Replacement (real property installed)		ELP	ELP	ELP	ELP	ELP	ELP	ELP
Maintenance		ELP	ELP	ELP	ELP	ELP	ELP	ELP
Power supply protection ⁵		A	A	A	A	A	A	ELP
JANITORIAL AND RECYCLING SERVICES								
Recycling of Paper, Plastic and Cardboard ⁶		A	A	A	A	N/A	ELP	ELP
Tenant Space (including Floors and Tenant Restroom Areas)		A	A	A	A	ELP	ELP	ELP
Window Cleaning - Appurtenant to Tenant Space (Int. & Ext.)		A	A	A	A	ELP	ELP	ELP
Window Cleaning - All Others (Interior & Exterior)						ELP	ELP	ELP
Shampoo Carpets/Wax Floors		ELP	A	A	A	ELP	ELP	ELP
PEST CONTROL								
Rodents and Insects ⁷		ELP	ELP	ELP	ELP	ELP	ELP	ELP
PLUMBING AND SEWER								
Incoming Water Line from Common Use Water Line to Fixture		N/A	ELP	N/A	ELP	ELP	N/A	N/A
Sanitary Sewer Line		N/A	ELP	N/A	ELP	ELP	N/A	N/A
Restrooms/Breakrooms (Fixture Repair & Replacement)		N/A	A	N/A	A	ELP	N/A	N/A
SIGNS								
Ticket Counter Backwall/Above Ticket Counter		A	N/A	A	N/A	N/A	N/A	N/A
Concourses: Podium Backwall/Holdroom walls		N/A	N/A	N/A	N/A	N/A	A	N/A
Directional/Informational Signage		ELP	N/A	N/A	N/A	N/A	ELP	ELP
TRASH REMOVAL								
Trash Removal (City will provide dumpster/compactor)		A ⁸	A	A	A	A	ELP ⁹	ELP

		SPACE		
B. BAGGAGE CONVEYANCE SYSTEM		PREFERENTIAL SPACE (Ticket Counter)	BAG MAKEUP	BAG CLAIM
BAGGAGE CONVEYANCE SYSTEM AND CAROUSELS				
Repair and Maintenance		A	A	ELP

		SERVICES					
C. RAMP AREAS		SNOW REMOVAL	RAMP SCRUBBING	PAVEMENT PAINTING	SPILLS	MAINTENANCE	JANITORIAL AND TRASH REMOVAL
JET BRIDGES (City Owned)						ELP	A ¹⁰
LIFTING DEVICE (City Owned)						ELP	
RAMP MAINTENANCE (Including Jet Bridge Ramp Areas)		ELP	ELP	ELP	A ¹¹		ELP

FOOTNOTES:

¹City will paint walls one time during the five year term of the agreement. Airline will be charged back for any additional paint requests.

²D-Mark is defined as the point in the terminal building where telecommunication's lines ends and the City's begins.

³Replacement of keys will be charged back to Airline

⁴Airlines are responsible for their own ramp gate fire extinguishers.

⁵Airline is responsible for providing adequate power supply protection for all vital services and important equipment sensitive to voltage drops, voltage spikes, or temporary power outages as may occur from time to time.

⁶City will provide dumpsters for recyclables.

⁷ Regularly scheduled service only.

⁸Airline will remove trash from curbside check-in counter.

⁹City will remove trash from containers for public use. Airline will remove trash from their operations.

¹⁰Airline shall safely and properly collect and dispose of bio-hazards and other hazmat from their aircraft and provide trash removal from their jet bridges.

¹¹City will mitigate any ineffective response and charge Airline for the clean-up.



ASSIGNED EQUIPMENT PARKING SPACES

ALL PARKING SPACES - 1,600 SQ.FT.

1	DELTA AIRLINES
2-6	SOUTHWEST AIRLINES
7-8	UNASSIGNED
9-10	AMERICAN AIRLINES
11-15	UNASSIGNED

100' 50' 0'
SCALE: 1" = 100'

El Paso International Airport - Airline Operating Agreement

Exhibit "E"



Monthly Activity Report - CHARTERS

Due on or before the 10th day of each month

Activity Report for the Month of:

Airport: ELP

Airline Name:

E-mail report to: ELPreports@elpasotexas.gov

For more info call: (915) 212-7303

Date:

Brenda Garcia-Olivas, Airport Terminal Services Manager

Passangers	Enplaned	Deplaned	Totals
Revenue	<input type="text"/>	<input type="text"/>	-
Non-Revenue	<input type="text"/>	<input type="text"/>	-
Total Passangers	-	-	

Aircraft Type	# of Landings	Aircraft Max Landing Weight (in lbs)	Total Weight
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<input type="text"/>	<input type="text"/>	<input type="text"/>	-
TOTALS	-		-

	Enplaned	Deplaned	Totals
Ticket counter	<input type="text"/>	<input type="text"/>	0
AIR Freight (lbs)	<input type="text"/>	<input type="text"/>	
International Freight (lbs)	<input type="text"/>	<input type="text"/>	0

Contact information for individual submitting reports:

Carrier Rep:

Title:

Telephone:

Email:

EXHIBIT "G"

Federal Aviation Administration Required Provisions

A. General Civil Rights Clause.

1. In all its activities within the scope of its airport program, Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee.
2. The above provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration.

B. Compliance with Nondiscrimination Provisions. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Agreements, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Lessor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the

information, the Contractor will so certify to Lessor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, Lessor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as Lessor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request Lessor to enter into any litigation to protect the interests of Lessor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975

and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. 74087 (2005));
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

D. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

1. Lessee for itself, its, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

E. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Lessee, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin,

will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

2. With respect to the Lease, in the event of breach of any of the above Non-discrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

Subcontracts. Lessee agrees that it shall insert in any subcontracts the clauses set forth in paragraphs (A) through (E) above and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. Lessee shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (E).